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65TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { DOCUMENT No. 137

PERE MARQUETTE RAILROAD COMPANY AND CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY

REPORT OF THE INTERSTATE COMMERCE COMMISSION

UPON THE

CHARACTER OF SERVICE, PHYSICAL CONDITION OF EQUIPMENT AND PROPERTY, FINANCIAL HISTORY, TRANSACTIONS, AND PRACTICES OF THE PERE MARQUETTE RAILROAD COMPANY AND THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY

MAY 10, 1917.—Ordered to be printed

WASHINGTON
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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 6833.

IN RE PERE MARQUETTE RAILROAD COMPANY AND CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY.

March 13, 1917.

Seward L. Merriam, *Henry M. Campbell*, and *Thomas S. Parker* for Pere Marquette Railroad Company and its receivers.

Morison R. Waite for Cincinnati, Hamilton & Dayton Railway Company and its receivers.

C. A. Severance for J. P. Morgan & Company.

W. M. Ivins, jr., for Paul Coster.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Pursuant to request of the Committee on Interstate and Foreign Commerce of the House of Representatives this Commission, on April 24, 1914, entered into a proceeding of inquiry and investigation, upon its own motion into and concerning "the character of the service, physical condition of the equipment and property, financial history, transactions, and practices of the Pere Marquette Railroad Company." Shortly thereafter it developed in the hearings in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, that many of the transactions of that company since July 1, 1904, were closely interwoven with those of the Cincinnati, Hamilton & Dayton Railway Company, and a like order of investigation in respect of the latter company was entered on July 15, 1914, in the same proceeding. The combined investigation has been conducted throughout, as requested by the House committee, in connection with the valuation of the property of these carriers, under section 19a of the act to regulate commerce.

The two respondent carriers will be referred to in this report as the Pere Marquette and the C., H. & D. The same designations are used in referring to the two predecessor companies.

SYNOPSIS.

It may be well at the outset to marshal the outstanding facts, among the many disclosed of record, which have affected the ability

of these two carriers to do their duty as common carriers and also the value of their securities in the hands of the investing public.

The Pere Marquette came into being as a consolidation of three relatively unsuccessful Michigan roads and began operation on January 1, 1900. The consolidation was brought about by New England interests headed by W. W. Crapo and Nathaniel Thayer, and in the process outstanding capital stock in the hands of the public was inflated by $1,461,250 and book value of property by $4,290,230.41. The Crapo-Thayer control continued for three years. Its operating policies were sound in the main; rolling stock and miles operated were increased; a small surplus was accumulated and used for improvements; no common-stock dividends were paid, and physical condition was bettered. Outstanding long term debt was increased by almost $6,000,000 and at the end of the three years was about $31,000,000. In the next 12 years it was increased by more than $50,000,000 under the succeeding managements.

The first of these was the Prince management, which secured control on December 29, 1902, through purchase of Pere Marquette common at a maximum of $85 per share. Its policy of expansion included acquisition of new equipment costing over $6,000,000, and of about 383 miles of main and branch lines, most of which had a history of failure. In acquiring this mileage underlying bonds of over $4,000,000 were assumed and almost $3,500,000 bonds issued. The Prince interests reversed the policy of their predecessors, undermaintained road and equipment, paid unearned dividends on common stock, and, in the 18 months of their management, added $2,500,000 net to current liabilities, also added over $14,500,000 to outstanding long term debt, promoted a C., H. & D. syndicate, and through it sold 110,000 shares of Pere Marquette common to the C., H. & D. at $125 per share.

The next management was that of the C., H. & D. syndicate, which took control of both carriers on July 7, 1904, and parted with it in the following month to the Zimmerman-Hollins interests. During these few weeks new and heavy burdens were bound upon the Pere Marquette.

The Zimmerman-Hollins management succeeded to the control in August, 1904, and continued the work begun by the Prince interests, with the result that when the control of both roads was sold to J. P. Morgan & Company on October 20, 1905, both were promptly put under the first receiverships which began in December, 1905.

Meantime another $10,000,000 of long term Pere Marquette securities had been marketed through interested parties at a cost to the road of over $1,100,000 in discounts, $1,645,000 was paid to certain members of Hollins's pool for their worthless stock in the Toledo Railway & Terminal Company, $400,000 was advanced under

syndicate schemes to affiliated companies and lost, and over $1,100,000 was used to pay off floating debts contracted by the Prince régime. The mileage and equipment were somewhat increased. Operation was unsuccessful and resulted in deficits.

Two years of receivership were succeeded in December, 1907, by a Morgan reorganization based on the consolidation of the Pere Marquette with its already controlled Pere Marquette of Indiana, 20 miles long. This furnished the pretext for further stock inflation, for an issue of $5,000,000 of 6 per cent debentures, and for the writing up as "cost of road and equipment" of the direct losses, aggregating almost $5,000,000, of the former administrations. Morgan control has continued since, except for the second receivership, which began on April 5, 1912. In the intervening years the Pere Marquette was in constant difficulty, revenues failed to provide for expenses and charges, and bond interest was paid only at the cost of adequate maintenance of the property. Road and equipment deteriorated markedly, financing became more and more difficult, and needed funds were secured only at the expense of heavy discounts. The second receivership was necessary to accomplish what the first had failed to accomplish, the physical and financial rehabilitation of the Pere Marquette.

The road is now emerging from the second receivership. During five years of court control it has greatly improved in physical condition, and its service has improved accordingly. Under the reorganization plan a large part of the fixed interest-bearing obligations outstanding on June 30, 1916, are to be exchanged for capital stock, of which there is to be $11,200,000 of 5 per cent prior preference, cumulative, $12,429,000 of 5 per cent preferred, cumulative, and $45,046,000 of common shares. The plan contemplates a decrease of over $8,000,000 in capitalization, exclusive of overdue interest on funded debt amounting to approximately $10,000,000, and a considerable decrease in fixed interest charges. The new capitalization will also represent $16,000,000 of new money provided for reorganization expenses, additions and betterments, working capital, and other purposes.

In contrast to the Pere Marquette the C., H. & D., prior to July 7, 1904, when the C., H. & D. syndicate took control, was a highly prosperous road, despite losses of several millions through Henry S. Ives and his associates in the late eighties, the drain of supporting less prosperous lines west of Hamilton, Ohio, a funding of deficits and interest on the western lines into some $1,800,000 of bonds, and the injection in 1895 of $10,200,000 of water into the capital stock through the consolidation effected by the Shoemaker-Woodford interests, then in control. These interests sold out to the C., H. & D.

syndicate in 1904, receiving $125 per share for their common stock, which was water, and $110 per share for 10,000 shares of preferred stock. The surplus of that date was replaced in the following year by a deficit of at least $1,086,127.49, allowance being made for some $843,000 concealed by falsification of accounts.

In organizing the syndicate Prince and his Pere Marquette associates had joined with promoters of the Toledo Railway & Terminal Company, a new and unsuccessful belt line at Toledo, which cost $2,610,000 and ultimately yielded those promoters a profit of $2,190,000. The story of this company is told in Appendix 12. Nearly 75 per cent of the underwriting in the C., H. & D. syndicate was secured by promoters' pledges as to what the C., H. & D. or the Pere Marquette, or both, would do. These included promised contracts to an express company and to manufacturers of equipment and appliances. And even after the underwriting was completed the syndicate managers were constrained to borrow over $3,000,000 to acquire control on July 7, 1904. On the same day corporate action was taken to fulfill the pledges made and carry out the plans previously settled, involving large increases in fixed interest-bearing debt. The road then operated about 624 miles of single track, with 184 locomotives and 9,579 cars. In round numbers, its capital stock was about $16,000,000 and its long term debt $12,700,000. Its current assets exceeded its current liabilities by nearly $1,000,000.

Holders of the 5 per cent preferred stock, which was noncumulative, were startled by the new debt and at once threatened proceedings in court for rescission. The matter was compromised by agreement that the company should retire such preferred stock at 110 of par. This necessitated fresh financing and the syndicate was obliged to surrender its month old control to H. B. Hollins & Company, who were to furnish the funds for retirement and be paid by the company a cash commission of $100,000 and a bonus of $12 per share and interest. The company was thus compelled by its management to pay over $122 per share for its preferred stock, including shares issued from the treasury after the retirement began, instead of retiring it at par. Incidentally the fixed interest charges were again greatly increased.

The Zimmerman-Hollins interests retained control from August, 1904, to October 20, 1905, when they sold the common stock to J. P. Morgan & Company for $160 per share. It had cost them with syndicate expense about $140, and, as previously stated, never represented a dollar of investment in the property of the company. During the 14 months of their management the figure of miles operated was swelled by completion of a 12-mile extension, some trackage rights at Toledo, and a change in accounting methods as to 381

miles of a subsidiary. The number of locomotives was increased by 49 and of cars by 2,739 partly by the same process and partly by purchases. The capital stock was decreased, by retirement of the preferred, to $8,302,404, but the long term debt was more than trebled, increasing the aggregate capitalization by twenty millions to $48,008,871.85. The principal debt increase may be summarized as follows:

$2,920,000 of 4½ per cent equipment trust obligations.

$15,000,000 of 4 per cent collateral trust notes, $9,388,000, issued to redeem 66,769½ shares of 5 per cent preferred stock and $5,612,000 to refund noninterest-bearing purchase money collateral trust notes which had been issued in part payment for 110,000 shares of Pere Marquette stock.

$8,250,000 of 4 per cent refunding mortgage bonds issued in part payment for 110,000 shares of Pere Marquette stock.

$225,000 branch-line bonds, previously outstanding but not recorded as a C., H. & D. liability.

During the Zimmerman-Hollins control noncumulative preferred stocks were retired by the issue of fixed interest-bearing securities of much greater par value, and a Hollins syndicate reaped large profits; noninterest-bearing notes redeemable in common stock were in fact redeemed prior to maturity with fixed interest-bearing obligations, and Hollins took the profits; millions of Pere Marquette bonds guaranteed by the C., H. & D. were floated, and Hollins syndicates took more profits; utterly worthless stock of the Toledo Railway & Terminal Company was sold by the holders, among whom were C., H. & D.-Pere Marquette directors, to the Pere Marquette, and again Hollins profited. Finally, in anticipation of the sale to Morgan of their holdings of C., H. & D., valuable properties and rights of the latter were transferred to their recently acquired Detroit, Toledo & Ironton Railway. The income account proved the utter inability of the system to carry its load of debt, even though the accounts were freely falsified.

Morgan's purchase was on behalf of the Erie Railroad Company. The incidents of that purchase, its speedy rescission by the Erie, and the assumption by Morgan of the obligation, are later set forth. Immediately after the control had been returned to Morgan a receivership was asked, and it began December 4, 1905.

The C., H. & D. continued in receivership until August, 1909. During the four years from July 1, 1905, to June 30, 1909, it failed to earn fixed charges by over $5,584,000. The receiver issued his 6 per cent certificates for $1,127,128, of which $103,468 was used to purchase equipment and $1,023,660 to pay interest on funded debt maturing January 1 and July 1, 1906. The current liabilities of the company also increased. About $1,000,000 of equipment trust obligations were paid off.

In the early summer of 1908 the comptroller of the Baltimore & Ohio after an examination at the direction of his executives made an extended report in which the hopeless condition of the C., H. & D. was clearly shown. In the face of this report the Baltimore & Ohio board on February 5, 1909, authorized a committee to investigate the situation in the light of a Morgan proposal looking to purchase of the C., H. & D. stock and a readjustment of that road's finances. Their report was favorable to purchase, and this, with an extensive readjustment of the finances of the C., H. & D., was arranged in the summer of 1909, the Baltimore & Ohio guaranteeing many millions of the new securities issued by the C., H. & D.

It is difficult to determine just what actuated the Baltimore & Ohio management in taking over the C., H. & D. Their original expectations had failed before the preliminary negotiations were completed. The Pere Marquette was not even inquired into, despite its recent release from receivership and the fact that the C., H. & D. was then carrying Pere Marquette common as an asset of $13,750,000.

Operations of the C., H. & D. during the five years of Baltimore & Ohio control to June 30, 1914, resulted in deficits aggregating over $7,450,000. Included in this is $1,100,991.56 of direct losses on account of flood damage in the spring of 1913. Failure to negotiate C., H. & D. first and refunding bonds necessitated loans by the Baltimore & Ohio, and by June 30, 1914, the latter had advanced $22,276,877.52 for construction, deficits, maturing equipment obligations, flood expenditures, and the payment at maturity on July 1, 1913, of $11,557,000 purchase money collateral trust gold notes, with six months' interest thereon.

Not until after the facts had been disclosed in the course of *The Five Per Cent Case*, *supra*, did the Baltimore & Ohio's annual reports to its stockholders contain anything which would inform even the careful student that its C., H. & D. advances to July 2, 1913, had amounted to $19,289,405. If that sum be reduced by the estimated value of the nonsystem securities pledged thereunder the net advances, of which the greater part represented loss, would be $15,900,000. This latter amount exceeds by more than $5,500,000 the net corporate income of the Baltimore & Ohio, after payment of dividends, for the four years to June 30, 1913. It is more than one-third of the amount paid in dividends during those four years. The rate of dividend on Baltimore & Ohio common in 1915 and 1916 was 5 per cent as against the 6 per cent previously paid.

The C., H. & D. again passed into receivers' hands on July 2, 1914. The deficit in the year ended June 30, 1915, was $3,093,185.58, allowing for a full accrual of interest as theretofore. In September, 1915, the Cincinnati, Indianapolis & Western, owning the lines west of Hamilton, was foreclosed and sold, and C., H. & D. operation

of the same ceased after November 30. For the year ended June 30, 1916, the deficit was $1,356,554.47.

A reorganization plan was declared operative on April 7, 1916. Under it a new company will take over about 368 miles, comprising the lines from Cincinnati to Toledo and from Dayton to Ironton Junction, with some smaller branches. The Baltimore & Ohio is redeeming the C., H. & D. general mortgage bonds at 70 plus, and is to issue a new 4 per cent bond for cash requirements and refunding. After deducting collateral of an estimated value of $3,368,000 from its actual and prospective outlay there will be left $35,892,323 as its approximate net ultimate investment in the C., H. & D., not allowing for $3,274,000 interest for three years to June 30, 1916. In the fiscal year ended on that date the Baltimore & Ohio wrote off against surplus $10,892,323, thus reducing its book investment in the C., H. & D. to $25,000,000.

SCOPE AND DATA.

We proceed to show within the limits of the record how the various schemes were conceived and carried through; who the responsible parties were and what their profits; why the earlier receiverships failed to rehabilitate the roads; and how radical reorganization ultimately became necessary.

It will assist an understanding of the affairs of these two railroads to bear in mind certain landmarks in their histories since the organization of the first Pere Marquette in 1899, and of the C., H. & D. in 1895. These may be tabulated chronologically as follows:

Date.	Pere Marquette.	Cincinnati, Hamilton & Dayton.
June 6, 1895	.....	Organized, by consolidation of the Cincinnati, Hamilton & Dayton R. R. Co., the Cincinnati, Dayton & Chicago R. R. Co., and the Cincinnati, Dayton & Ironton R. R. Co., under Shoemaker-Woodford control and management, as of July 1, 1895.
Nov. 1, 1899	Organized, to consolidate the Flint & Pere Marquette R. R. Co., the Detroit, Grand Rapids & Western R. R. Co., and the Chicago & West Michigan Ry. Co., under Crapo-Thayer control and management, as of Jan. 1, 1900.	
Sept. 29, 1902	Prince stock syndicate formed.....	
Dec. 29, 1902	Prince syndicate control began.....	
May 19, 1904	.....	C., H. & D. common stock syndicate formed.
July 7, 1904	Prince sold to C., H. & D., at $125 per share, 110,000 shares Pere Marquette common stock.	C., H & D. common stock syndicate control began.
July 21, 1904	Two C., H. & D. nominees elected directors.	
Aug. 16, 1904	.....	Zimmerman-Hollins control of C., H. & D. syndicate began, and plan formulated to retire C., H. & D. 5 per cent preferred stock.
Mar. 1, 1905	Leased to the C., H. & D., all Pere Marquette treasury stock, 33,222½ shares becoming the property of the lessee.	Leased the Pere Marquette, and thereby became owner of 33,222½ shares Pere Marquette treasury stock, which, with shares previously purchased, established actual voting control.
Mar. 7, 1905	Board of directors reorganized with C., H. & D. nominees controlling.	Took control of Pere Marquette board.
Sept. 9, 1905	.....	Zimmerman-Hollins stock holdings sold to J. P. Morgan & Co., the latter acting as agent for the Erie R. R. Co.
Oct. 20, 1905	.....	Erie R. R. Co. formally purchased 74,059 shares of C., H. & D. stock and Erie nominees made officers and directors.

Date.	Pere Marquette.	Cincinnati, Hamilton & Dayton.
Oct. 25, 1905	Erie nominees made officers and directors.	
Nov. 29, 1905	.....	Erie purchase of C., H. & D. stock rescinded.
Dec. 2, 1905	.....	Agreement between Erie and Morgan & Co., whereby latter purchases the C., H. & D. stock from the former.
Dec. 4, 1905	George W. Perkins, representing Morgan & Co., elected to directorate.	
Dec. 4, 1905	Pere Marquette first receivership began....	C., H. & D. first receivership began; never formally terminated.
Aug. 12, 1907	Consolidation agreement between Pere Marquette and Pere Marquette of Indiana. Board reorganized with Morgan & Co. nominees as directors.	
Dec. 11, 1907	Consolidation agreement made effective by filing.	
Dec. 14, 1907	Pere Marquette reorganized; receivership terminated.	
Apr. 30, 1908	Harmon-Crapo arbitration award, one feature being that the lease of Pere Marquette by C., H. & D. was canceled as of Dec. 4, 1905.	
June 26, 1908	.....	Negotiations opened between Morgan & Co. and Baltimore & Ohio R. R. Co., looking to the purchase by latter of Morgan & Co.'s holdings in C., H. & D.
July 1, 1909	.....	Formal agreements, including the "purchase contract," were entered into whereby the finances of the C., H. & D. were readjusted and control taken over by Baltimore & Ohio.
Aug. 10, 1909	.....	Baltimore & Ohio stockholders approved purchase of C., H. & D. control.
Aug. 18, 1909	.....	Baltimore & Ohio management established with election of its nominees as directors.
Nov. 5, 1909	Board reorganized with Baltimore & Ohio nominees as directors.	
Feb. 27, 1911	Morgan & Co. agreed to purchase at $23 per share the 110,000 shares of Pere Marquette stock held by the C., H. & D. Morgan & Co.-Baltimore & Ohio "purchase contract" of July 1, 1909, supplemented, making the minimum price to be paid by the Baltimore & Ohio for Morgan & Co.'s C., H. & D. stock the equivalent of what Morgan & Co. were to pay the C., H. & D. for the latter's Pere Marquette stock.	
Feb. 27-28, 1911.	Baltimore & Ohio nominees resign from directorate; Morgan & Co. in control.	
Mar. 2, 1911		
Apr. 5, 1912	Second receivership began.	
Oct. 21, 1912	Morgan & Co.-Baltimore & Ohio "purchase contract" of July 1, 1909, again supplemented so as to make the previously agreed minimum price to be paid by the Baltimore & Ohio for the C., H. & D. stock the maximum price as well.	
July 2, 1914	.....	Second receivership began.

The original accounts and records of the construction and operations of the various roads which from time to time have become part of these two systems are not in existence in complete form, but the record herein has been made up from such sources wherever available. The lack of such accounts and records has been overcome, where possible, by using reports made under oath by the officials of the constituent lines to federal and state authorities, and the record has been further supplemented by data contained in annual reports to stockholders.

Throughout this report exception is taken to the transactions of the carriers only when the record unqualifiedly justifies the exception. Any element of doubt, whether because of the lack of authoritative data, or because such data are not entirely clear, has been resolved in favor of the carrier.

Appendix 1 is a map of the Pere Marquette and C., H. & D. showing the components of the two roads and the connecting routes of the Chicago, Cincinnati & Louisville Railroad, the Erie Railroad, the Baltimore & Ohio system, and other lines considered in this report.

Appendix 2 is an abridged corporate history chart of the Pere Marquette system; Appendix 3 is a similar chart of the C., H. & D. system. Appendix 4 is a comparative statement of the property and finances of the Pere Marquette yearly for the period 1900–1914; a like statement covering the C., H. & D. for the years 1896–1914 is found in Appendix 5.

This report will treat first of the Pere Marquette, separately and completely; then of the C., H. & D. in like manner. Because of the intercorporate relation which existed between the two roads in 1904 and 1905 there is some necessary overlapping in the two portions of the report. The subtitles under which the facts of record are presented are as follows:

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PERE MARQUETTE.

I. LOCATION AND TRAFFIC.

The Pere Marquette system as a part of the railroad map is not easily described in words. It has an east and west line from Chicago, Ill., through Detroit, Mich., and thence over its Canadian lines to the Niagara frontier; a north and south line between Chicago and Bay View, Mich., serving the east-side Lake Michigan points and the summer resort territory in the northwestern section of the lower peninsula of Michigan. Another through line runs from Ludington, Mich., in a general south and easterly direction through Saginaw, Mich., to Port Huron and Detroit, Mich., and to Toledo, Ohio. At Port Huron and Detroit connections are made with the Canadian lines, permitting through service east to the Niagara frontier. Much of

its exceptionally large branch-line mileage is colloquially described as serving the "web district," the western central part of the southern peninsula of Michigan; another extensive branch-line operation is in the so-called "thumb district" north of Detroit. By ferry service out of Ludington across Lake Michigan the west-side ports of Milwaukee and Manitowoc, Wis., are reached, giving connections with the northwest.

The road is, more than anything else, a local Michigan road. It serves with its owned lines a very large part of the population of the southern peninsula of that state. The branch lines operate through sparsely settled sections, producing a relatively light traffic. In this Michigan service it meets the competition of the Michigan Central, the Grand Rapids & Indiana, and the Ann Arbor, as north and south lines, and the Michigan Central and the Grand Trunk Western as east and west lines. Save the Ann Arbor, these competitors have system affiliations, which militate against the Pere Marquette in securing through business.

In years past the Pere Marquette's big tonnage was in forest products originating on its line. This has greatly decreased and now forms only a small part of the whole. The main traffic to-day is in coal, originating off its line. The strictly local tonnage is very largely short haul and, to a considerable extent, seasonal.

In the opinion of the present management the future of the road must lie in its tonnage of manufactured and agricultural products, but more in the manufactured, and especially in its through business. It is believed that there is great opportunity to increase this business, and the road's facilities are such that it can easily care for a large increase in traffic with small increase in operating expenses.

But in this connection it must be remembered that the Pere Marquette is not in an enviable position as to its western and eastern termini. To reach Chicago 40 miles of trackage rights over competitive lines are used from Porter, Ind., to its owned freight yard in Chicago, some 15 miles out. The ferry service to Milwaukee and Manitowoc operates the year round, but in each city the terminals are in whole or in part leased from lines competing with it for through business via the Chicago gateway. The rentals paid in reaching or using these western termini are admittedly high, and in its operations there the Pere Marquette suffers the disadvantage of exceptionally high switching absorptions.

On the east the Pere Marquette reaches the Niagara frontier, terminating at Black Rock, N. Y., but not at Buffalo proper. Here again the route involves the exercise of trackage rights over the line of a competitor, the Michigan Central, the distance of that operation being 133 miles from St. Thomas, Ontario, east. For the Pere

Marquette, that mileage is practically a bridge, and no more, as its contracts prohibit its engaging in local business on the Michigan Central. Furthermore, it does no less-than-carload business in Buffalo, and on all carload business to and from that city it must absorb terminal switching charges of its connections. Despite these conditions, and the further fact that it conducts no passenger service east of St. Thomas, the Per. Marquette management is of record as saying that the contract with the Michigan Central is an asset to the Pere Marquette.

From Chicago to the Niagara frontier the Pere Marquette forms the "long line," exceeding by some 50 miles the shorter routes of the Michigan Central and the Wabash. Its greatest through traffic east and west moves via Milwaukee and Manitowoc, and this is considered by the management to be the life of that portion of the road. But at those points, and especially at Milwaukee, the Pere Marquette has operated for years under contracts for terminal arrangements which are burdensome. One reason for this is undoubtedly the fact that the road from which the Pere Marquette secured its Milwaukee facilities was a competitor via the Chicago gateway, and demanded as rental 60 per cent of what its own revenue would have been had it handled the traffic via Chicago.

These various difficulties attending the operation of the routes through Chicago and Milwaukee to the east are somewhat offset, though by no means counterbalanced, by the fact that the Pere Marquette's route from Manitowoc through Ludington to the Buffalo district makes the short line from the northwest to the east and avoids the congestion of the Chicago gateway. But although this route has been open since 1897 it does not get the traffic which its management feels it should. As to this it must be remembered that the Pere Marquette leases its terminal facilities in Manitowoc from connecting roads which also operate through Chicago, and which, should they deliver eastbound traffic to the Pere Marquette at Manitowoc, would necessarily short haul themselves.

At its other principal points the Pere Marquette is in a more favorable situation as to terminals, either owning them solely or jointly or leasing under long term contracts which seem satisfactory to the management.

II. EARLY HISTORY, TO JANUARY 1, 1900.

To ascertain, if possible, what real value there was in the properties consolidated into the Pere Marquette as of January 1, 1900, an analysis has been made of their financial history. The three constituent companies which ceased operations December 31, 1899, were the Flint & Pere Marquette Railroad Company, the Detroit, Grand Rapids & Western Railroad Company, and the Chicago &

West Michigan Railway Company. As of their closing business day, the balance sheets of these three roads consolidated into one joint balance sheet are shown below:

Flint & Pere Marquette Railroad Company, Detroit, Grand Rapids & Western Railroad Company, and Chicago & West Michigan Railway Company consolidated general balance sheet, December 31, 1899.

ASSETS.

Investments:		
Investment in road and equipment	$48,068,054.06	
Sinking funds	22,180.49	
Miscellaneous physical property	53,984.12	
Investment in affiliated companies	1,670,714.71	
Other investments	100.00	
Total investments		$49,815,033.38
Current assets:		
Cash	492,876.83	
Special deposits	3,860.00	
Loans and bills receivable	158,048.79	
Traffic and car service balance receivable	11,139.27	
Net balance receivable from agents and conductors	267,861.63	
Miscellaneous accounts receivable	391,891.16	
Material and supplies	208,032.06	
Interest and dividends receivable	3,467.50	
Total current assets		1,537,147.24
Deferred assets:		
Working fund advances		48,202.01
Unadjusted debits:		
Rents and insurance premium paid in advance	60.72	
Other unadjusted debits	407,791.74	
Securities issued or assumed, unpledged	(785,058.12)	
Total unadjusted debits		407,852.46
Total		51,808,235.09

LIABILITIES.

Stock:		
Capital stock		22,846,241.88
Long term debt:		
Funded debt unmatured		24,482,168.13
Current liabilities:		
Loans and bills payable	100,000.00	
Traffic and car service balance payable	137,480.87	
Audited accounts and wages payable	979,313.06	
Miscellaneous accounts payable	14,651.54	
Interest matured unpaid	685,643.85	
Dividends matured unpaid	1,203.00	
Unmatured interest accrued	223,077.89	
Total current liabilities		2,141,370.21

Unadjusted credits:		
Tax liability	$197,585.63	
Other unadjusted credits	17,657.09	
Total unadjusted credits		$215,242.72
Corporate surplus:		
Sinking fund reserves	13,000.00	
Profit and loss—balance	2,110,212.15	
Total corporate surplus		2,123,212.15
Total		51,808,235.09

The total capital stock issues of these three constituents and their components, from the records now available, aggregated $43,617,613.69. In accounting for the proceeds of those capital stock issues it is necessary to account twice for $582,760 because of the following circumstances: The Chicago & West Michigan Railway Company reissued to the amount of $582,760 stocks which it had acquired through an investment of its predecessor, the Chicago & West Michigan Railroad Company, in the stocks of roads afterwards consolidated with the latter to form the Chicago & West Michigan Railway Company. Previous to that consolidation the Chicago & West Michigan Railroad Company had purchased and carried as an investment certain stocks of the Grand Haven and the Grand Rapids, Newaygo & Lake Shore railroad companies. Under the plan of consolidation the new company's stock was issued in exchange for that of the constituents, and thus the Chicago & West Michigan Railway Company by this exchange became the owner of part of its own stock. This was placed in its treasury and subsequently reissued.

Thus the total proceeds to be accounted for are $44,200,373.69, made up from the records now available, as follows:

Cash		$13,761,284.51
Construction or property		772,615.44
Exchanged for:		
Bond and other interest		3,613,104.38
Bills payable		68,649.40
Accounts payable		102,983.24
Stock of predecessor companies for which no records are available to show proceeds		122,900.00
Total consideration		18,441,536.97
Bonus, discount, commissions, etc		12,308,321.72
Donations: Stock issued against previous donations		34,690.00
Exchanged for stock of predecessor companies		13,415,825.00
Total		44,200,373.69

On December 31, 1899, there was outstanding only $22,846,241.88 of the original issues, which aggregated $43,617,613.69. The difference is accounted for thus:

There was lost to the holders thereof in foreclosures, reorganizations, and other changes in the various companies the following:

	Par value.
In the Detroit, Grand Rapids & Western group:	
Detroit, Lansing & Lake Michigan	$1,680,600.00
Detroit, Lansing & Northern	1,825,600.00
Saginaw & Western	4,500.00
Saginaw Valley & St. Louis	264,804.01
Saginaw & Grand Rapids	20,700.00
Grand Rapids, Lansing & Detroit	28,000.00
In the Chicago & West Michigan group:	
Chicago & Michigan Lake Shore	1,513,167.80
Grand Rapids, Newago & Lake Shore	366,700.00
Grand Haven	400,000.00
Total	6,104,071.81
There was exchanged for stocks of successor companies	13,415,825.00
There was canceled by the Detroit, Grand Rapids & Western Railroad Company when it acquired title to the property of the Saginaw & Grand Rapids Railroad Company its stock holdings in the latter to the value of	36,975.00
There was canceled by the Chicago & West Michigan Railway Company when it acquired title to the physical property of the White River Railroad Company its stock holdings in the latter to the value of	124,500.00
There was paid by the Flint & Pere Marquette Railroad Company for the physical property of the Port Huron & Northwestern Railway Company, free of encumbrances, $2,300,000. The records now available do not disclose what distribution thereof was made by the vendor corporation to the holders of its bonds, outstanding to the amount of $1,806,000, or to the holders of its outstanding stock to the amount of	1,090,000.00
Total	20,771,371.81

In taking up next the analysis of the funded debt issues of the Pere Marquette's constituents and their components to December 31, 1899, it should be first pointed out that in the foregoing capital stock analysis there have already been accounted for the proceeds of $15,940,505.50 of such funded debt, being that which had been subordinated at one time or another to capital stock. According to the joint balance sheet above the funded debt of the three constituent carriers outstanding at the cessation of business on December 31, 1899, was $24,482,168.13. The Flint & Pere Marquette had issued the following funded securities, which were not carried as liabilities on its books:

Pere Marquette Transportation Company bonds	$200,000
Morley & Potter bonds	120,000

The former company was organized in the interest of the Flint & Pere Marquette to construct and operate "car ferry No. 15"; the latter issue was an ordinary car trust. On December 31, 1899,

$140,000 of Pere Marquette Transportation Company bonds and $105,000 of Morley & Potter bonds were outstanding. Both these bond issues were then assumed by the Pere Marquette, although the latter was not written up until some time after the reorganization and at a date when it had been reduced by installment payments to $66,000. Furthermore, the Chicago & West Michigan had issued and outstanding on December 31, 1899, coupon scrip to the amount of $663,622.50. This was included in the joint balance sheet as of that date as "interest matured unpaid," but has been treated as funded debt. Therefore, the actual amount outstanding on December 31, 1899, was $25,390,790.63.

On the part of all the system lines the gross funded debt issues to the close of 1899 amounted to $56,182,666.10. There remain, therefore, $40,242,160.60 of the funded debt issues over and above the $15,940,505.50, the proceeds of which have already been accounted for in the capital stock analysis. The return to the issuing roads for these $40,242,160.60 was as below:

Cash	$25,746,254.58
Construction or property	2,367,201.22
Exchanged for:	
Bond and other interest	1,498,521.19
Bills payable	299,000.00
Receivers' certificates	109,212.50
Miscellaneous fractional certificates and scrip	15,050.54
Total consideration	30,035,240.03
Discount, commissions, and expenses	1,455,945.57
Exchanged for bonds of predecessor companies	8,597,000.00
Exchanged for purchase of stock of predecessor companies, the proceeds from which are accounted for in stock analysis	153,975.00
Total	40,242,160.60

The retirement of funded securities other than $8,597,000 by exchanged bonds amounted to $6,005,369.97. No records are available to show disposition of $249,000, leaving the balance of $25,390,790.63 outstanding December 31, 1899.

Thus it appears that as a result of all their issues of capital securities which have been located the roads forming the Pere Marquette had obtained up to December 31, 1899, proceeds aggregating the following:

Cash	$39,507,539.09
Construction or property	3,139,816.66
Exchanged for:	
Bond and other interest	5,111,625.57
Bills payable	867,649.40
Accounts payable	102,983.24
Receivers' certificates	109,212.50

Exchanged for—Continued.	
Stock of predecessor companies for which no records are available to show proceeds	$122,900.00
Miscellaneous fractional certificates and scrip	15,050.54
Total consideration	48,476,777.00
Bonus, discount, commissions, etc	13,764,267.29
Donations: Stock issued against previous donations	34,690.00
Exchange of securities of carriers' own issue	22,166,800.00
Total	84,442,534.29

It is practically impossible in the older accounts and records to ascertain exactly how the cash realized from the various security issues was expended. For that matter the task is almost equally impossible in the accounts and records of comparatively recent years. But manifestly the retirement of $6,005,369.97 up to December 31, 1899, must have been accomplished by the use of the proceeds of the later issues. The financial experiences of these earlier roads would make retirement by any other means highly improbable, if not impossible. Of significance also in that connection is the fact that of fifty-six millions of funded debt issued, and on the cash sales of which the average discount was less than 10 per cent, almost sixteen millions were subordinated in reorganizations and surrendered for capital stock.

The three constituents on December 31, 1899, carried in accounts covering investment in road and equipment $48,068,054.06. There are no accounts or records available permitting any analysis whatever of some $18,403,978.49 of this. Most of this sum was charged in the earlier years, and covered original construction. More or less complete accounts and records exist as to the remainder of $29,664,075.57. An analysis of whatever such accounts and records are available, accepting all entries at their face value in the absence of supporting documents, indicates an inflation in the charge to cost of road and equipment of $5,253,240.11. This is made up as follows:

	Charges.	Credits.
Discount and expenses on securities—less premiums	$1,224,477.69	
Adjustments of account, incident to reorganizations	2,899,804.48	$1,101,328.29
Stock bonus, net	3,556,494.44	
Operating expenses	65,554.90	
Depot and other rentals	95,624.74	
Interest	2,022.22	
Expenses incident to donations	877.92	
Depreciation of road	397.51	
Miscellaneous items	40.00	1,378.80
Construction charged elsewhere		950,780.10
Property acquired, not written up		41,342.59
Profit constructing subsidiary road		28,657.41
Operating income		62,779.26
Income from investments		191,065.67
Donations		7,367.76
Land grant account, net		207,353.91
Total	7,845,293.90	2,592,053.79
Net improper charges		5,253,240.11
Total	7,845,293.90	7,845,293.90

Passing now from the capital accounts to those covering operations, it appears that, as shown on the joint balance sheet of December 31, 1899, set out above, there was on that date a book surplus of $2,123,212.15 in the accounts of the Flint & Pere Marquette, the Detroit, Grand Rapids & Western, and the Chicago & West Michigan. In this connection there is next presented a consolidation of the income and profit and loss accounts of each road which eventually become a part of the Pere Marquette January 1, 1900, and for which the necessary data are available. There is good ground to believe that such roads as appear in the corporate history chart, Appendix 2, whose operations are not accounted for in this next table, never in fact conducted any operations; certain it is that if they did, such operations were not very extensive or very long continued.

Income account:		
Railway operating revenues		$134,164,947.36
Railway operating expenses		91,481,816.67
Net revenue from railway operations		42,683,130.69
Railway tax accruals		3,050,560.33
Railway operating income		39,632,570.36
Nonoperating income		781,905.08
Gross income		40,414,475.44
Deductions from gross income		36,035,625.49
Net income		4,378,849.95
Net income Flint & Pere Marquette Ry. Co., 1857–1871, for which no details are available		92,854.91
Total carried to profit and loss		4,471,704.86
Profit and loss:		
Credits—		
Balance transferred from income	$4,471,704.86	
Donations	177,389.18	
Miscellaneous credits	2,262,145.21	
Total credits		6,911,239.25
Debits—		
Dividends	9,074,399.50	
Surplus appropriated for investment in physical property	160,376.66	
Surplus applied to sinking and other reserve funds	7,800.00	
Miscellaneous appropriations of surplus	65,000.00	
Loss on retired road and equipment	67,243.45	
Debt discount extinguished through surplus	2,579,496.95	
Miscellaneous debits	1,296,700.91	
Total debits		13,251,017.47
Balance to debit of profit and loss		6,339,778.22

The dividends disbursed as shown above, $9,074,399.50, are reported in detail in Appendix 6.

The almost invariable end of the many unsuccessful operations indicated by the preceding table was receivership and reorganization. As a result thereof the accrued deficit of the old company was usually in fact or in effect capitalized in the securities of its successor, the latter thereby being enabled to begin business with a clear balance sheet. This practice of capitalizing the deficit is the explanation of the difference between the final result reached in the consolidated income and profit and loss statement above, an aggregate loss to December 31, 1899, and the showing of $2,123,212.15 surplus on the joint balance sheet of the three constituents as of that date. Not infrequently in those reorganizations first and second mortgage bonds were subordinated to preferred and common stock, and in some instances the common stock was wiped out of existence to make room for a new common to take up old preferred. The results of such exchanges of securities are indicated in the foregoing recital of the return to these corporations for their various bond and stock issues.

It will accomplish nothing to attempt to ascertain from the various preceding tables exactly what these many companies up to December 31, 1899, had expended in the construction and equipment of their properties. But along that line the following deductions may be made as indicating the limit of their possibilities in that direction.

Their security issues produced in cash and property, over and above the proceeds used for retirement of funded debt, the amount of $36,641,985.78. Their financial experience was such as to negative the suggestion that capital assets were extensively paid for out of current income, if, indeed, it does not warrant the conclusion that the converse was true and that current obligations were paid for out of the proceeds of funded debt. It has already been shown that this was accomplished in effect by the capitalization of bond interest, bills payable, and open accounts.

It seems entirely in accordance with the facts before us to say that, were complete accounts and records available for all these older roads, showing the details of all the original construction, wherein stock bonuses are most common, it would be found that the actual investment in their properties up to December 31, 1899, never exceeded $35,000,000. Their book value as of that date was $48,068,054.06.

The financial history of the Pere Marquette's predecessors may be summarized by the statement that those roads were uniformly poor, except in the decade 1880–1890 and for a few years thereafter. In those particular years southern Michigan was in

its prime as a lumber-producing territory. That the Pere Marquette's predecessors were primarily lumber roads, and some probably of the class known as "tap lines" to-day, is certain as to some and fairly to be deduced from record, especially as to tonnage statistics and financial experience, of more. A study of the tonnage statistics shows that when the lumber production was at its height forest products comprised 60 to 75 per cent of the aggregate traffic of these early roads. Even as late as 1900, the first entire calendar year of operation by the new Pere Marquette, these commodities furnished 30 per cent of the road's tonnage, and five-sixths of that originated on the line. By 1914 that class of tonnage had not only decreased 20 per cent in the absolute, compared with 1900, but relatively it furnished only 12 per cent of the company's total traffic, and the major portion originated with foreign roads.

The prosperity of the predecessor roads was not sufficiently solid to continue dividends in the panic years beginning with 1893. During those years the Detroit, Lansing & Northern and the Chicago West Michigan accrued deficits, while the Flint & Pere Marquette barely earned expenses and fixed charges. The Detroit, Lansing & Northern went into receiver's hands, and was reorganized in 1896 as the Detroit, Grand Rapids & Western.

III. ORGANIZATION OF 1900.

The original Pere Marquette Railroad Company was formed under Michigan laws on November 1, 1899, in contemplation of the consolidation of the properties of the Flint & Pere Marquette Railroad Company, the Detroit, Grand Rapids & Western Railroad Company, and the Chicago & West Michigan Railway Company. The mileage of these three roads was as follows:

	Miles.
Flint & Pere Marquette	689.71
Detroit, Grand Rapids & Western	380.00
Chicago & West Michigan	581.11
Total	1,650.82

Of this the only portion outside of southern Michigan was a short branch of the Chicago & West Michigan in the state of Indiana. This branch is now operated as a "proprietary" line, although it has been conveyed to and is a book asset of the Pere Marquette. These three constituent roads did not meet in direct competition at any point, and such competition by two of them existed at only a very few places. Nor could it be said that they, or any two of them, were in "cross-country competition" to any considerable extent.

The organization of the Pere Marquette had been preceded by extended negotiations between the parties controlling the three constituent roads, and on May 20, 1899, there had been addressed to their stockholders by a committee composed of members of their directorates what was termed "a plan for the union and readjustment of the capitalization of the above-mentioned companies." This was the foundation of an agreement of the same date between the committee, trust companies named therein as depositaries for the stock of the roads, and such stockholders as should deposit their stock under the agreement. The committee which handled this reorganization remained intact throughout, and was composed of William W. Crapo, Mark T. Cox, John M. Graham, Charles M. Heald, Charles Merriam, Oliver W. Mink, Thomas F. Ryan, and Nathaniel Thayer.

Apparently New England and New York capital and capitalists dominated the affairs of the constituent carriers, planned and consummated the reorganization and consolidation, and directed the affairs of the new Pere Marquette during its first three years of operation.

More than 95 per cent of the stock of the constituent companies was deposited with the committee under the plan and agreement in assent thereto. Each of the three constituent roads conveyed all its railroad property to the new Pere Marquette in December, 1899, and in return the Pere Marquette assumed their funded and other debts and obligations, and issued to each certain of the new Pere Marquette capital stocks, in accordance with the plan and contracts made supplementary thereto. These issues were as follows:

To—	Common stock, par value.	Preferred stock, par value.
Flint & Pere Marquette	$4,663,234	$7,488,930
Detroit, Grand Rapids & Western	2,839,054	4,511,070
Chicago & West Michigan	8,497,712	None.
Total	16,000,000	12,000,000

At that time the outstanding stocks of the constituent roads, including treasury fractional shares amounting to $258.12, were:

Road.	Common stock, par value.	Preferred stock, par value.
Flint & Pere Marquette	$3,298,200	$6,342,000
Detroit, Grand Rapids & Western	2,510,000	3,183,500
Chicago & West Michigan	7,512,800	None.
Total	13,321,000	9,525,500

The new capital stock did not pass directly to the predecessor corporations. It all went, under the contracts supplementing the reorganization plan, to the committee "as full paid and nonassessable stock." That committee on February 1, 1902, in an agreement between it, two of its members as trustees, and the Pere Marquette, reported as follows regarding its disposition of the $28,000,000 of stock which it had received:

Statement by the readjustment committee to the Pere Marquette Railroad Company of the manner in which that company's capital stock has been disposed of.

	Preferred stock.	Commom stock.
Delivered to Old Colony Trust Company for distribution among the depositors of stock of the Detroit, Grand Rapids & Western Railroad Company, and the Chicago & West Michigan Railway Company, pursuant to the above-mentioned plan and agreement	$3,820,200	$9,998,700
Delivered to the State Trust Company for distribution among the depositors of the stock of the Flint & Pere Marquette Railroad Company, pursuant to said plan and agreement	6,338,200	4,108,500
Disposed of in acquiring stock of the old companies not deposited under the plan, providing for expenses of the committee and otherwise under said plan	350,000	20,000
Total disposed of	10,508,400	14,127,200
Held by William W. Crapo and Mark T. Cox, trustees, to take up outstanding stock of old companies	3,800	38,350
	10,512,200	14,165,550
On hand for delivery to William W. Crapo and Mark T. Cox, as trustees pursuant to the agreement of this date between said trustees, the committee, and the Pere Marquette Railroad Company	1,487,800	1,834,450
Total	12,000,000	16,000,000

In the same agreement it was provided that the stock remaining on hand with the committee, $1,834,450 of common and $1,487,800 of preferred, should be delivered to Messrs. Crapo and Cox, as trustees for the Pere Marquette. This was done under that provision of the reorganization plan whereby the committee could "place in trust any part of the new securities to be issued * * * as they may deem judicious * * * for the uses * * * of the new company." The agreement also constituted a ratification by the Pere Marquette of the disposition of its stock by the committee, and released the committee from all liability as such.

To summarize these capital stock transactions, as of January 1, 1900, it appears that of the Pere Marquette's $28,000,000 of new capital stock, the amount of $24,307,750, including $1,461,250 of bonus, went to take up stocks of the predecessor roads aggregating $22,846,500; an additional $370,000 covered reorganization expenses, of which no record exists beyond the report of the readjustment committee that it was disposed of in acquiring stock of the old companies not deposited under the plan, providing for the expenses of the committee, and otherwise under the said plan, and $3,322,250 was

left in the hands of trustees for the company. But all of this $28,000,000 was immediately charged up as "cost of road" at the time of the reorganization and consolidation.

The new company at the same time assumed the funded debt of its constituents as follows:

Holly, Wayne & Monroe 8 per cent firsts	$1,000,000.00
Flint & Pere Marquette 6 per cent firsts	4,000,000.00
Flint & Pere Marquette 5 per cent consolidated	2,600,000.00
Flint & Pere Marquette 5 per cent P. H. division	3,325,000.00
Flint & Pere Marquette 5 per cent Toledo division	400,000.00
Ionia & Lansing 5 per cent firsts [1]	1,000.00
Detroit, Grand Rapids & Western 4 per cent consolidated	5,379,168.13
Chicago & West Michigan 5 per cent bonds	5,758,000.00
Chicago & North Michigan 5 per cent bonds	1,667,000.00
Grand Rapids, Newago & Lake Shore 7 per cent bonds [1]	19,000.00
Michigan Equipment Co. 6 per cent bonds [1]	205,000.00
Western Equipment Co. 6 per cent bonds	128,000.00
Total	24,482,168.13

Along therewith it also assumed $663,622.50 coupon scrip of the Chicago & West Michigan, and the $140,000 of 6 per cent "car ferry No. 15" bonds of the Pere Marquette Transportation Company, and $105,000 Morley & Potter "series B cars" bonds, already mentioned. The total funded liabilities assumed January 1, 1900, thus aggregated $25,390,790.63.

The new Pere Marquette at its inception also acquired minor investments and current and deferred assets of the constituents, and therewith assumed their current and deferred liabilities. These were as follows:

Road.	Assets.	Liabilities.
Flint & Pere Marquette	$1,061,446.57	$923,209.93
Detroit, Grand Rapids & Western	677,937.56	374,680.03
Chicago & West Michigan	612,639.97	414,240.92
Total	2,352,024.10	1,712,130.88

The new corporation, in opening up its books on January 1, 1900, wrote up as its capital asset, "cost of road and equipment," the sum of $52,645,897.41, being its capital stock issues and the funded debt assumed, less the excess of the predecessors' other assets acquired over other liabilities assumed. Taking into consideration subsequent adjustments of those current accounts, resulting in additional

[1] Portions of original issues.

net assets of $287,612.94, the ultimate charge to cost of road and equipment, in the reorganization of January 1, 1900, was as below:

Pere Marquette capital stock issued	$28,000,000.00
Predecessors' funded debt assumed	25,285,790.63
	53,285,790.63
Less predecessors' other assets and liabilities, net	927,506.16
Adjusted total as of Jan. 1, 1900	52,358,284.47

The property thus written up consisted of the above-described railroads, aggregating 1,650.82 miles in length, and their equipment, all of which on their accounts stood at a cost of only $48,068,054.06, and this latter total being subject to exceptions, as heretofore stated.

IV. CHANGES IN CONTROL, 1900 AND THEREAFTER.

1. *Crapo-Thayer control, 1900.*—The Pere Marquette's first permanent board of directors, organized in December, 1899, was composed of the following:

Representing Flint & Pere Marquette interests: Stanford T. Crapo, W. W. Crapo, Oliver W. Mink, John M. Graham, Thomas F. Ryan, Frederick H. Prince.

Representing Detroit, Grand Rapids & Western and Chicago & West Michigan interests: Charles W. Heald, Charles Merriam, Nathaniel Thayer, Mark T. Cox, H. H. Hunnewell.

This board continued until December 29, 1902, except that H. H. Hunnewell was succeeded by Walter Hunnewell on May 2, 1900. W. W. Crapo was elected its chairman and Charles M. Heald president of the new Pere Marquette, and both continued as such until the change in management on December 29, 1902.

2. *Prince syndicate control, 1903.*—This change was the result of the operations of a syndicate headed by Frederick H. Prince, of Boston, one of said directors. It was formed under a certain "Pere Marquette Railroad Company share syndicate agreement," dated September 29, 1902. This provided not only for buying and syndicating certain of the common stock but also for holding it in a voting trust for five years, the syndicate managers being the voting trustees. Before the syndicate took definite shape the dominating interests had, under date of September 5, 1902, secured options for purchase of Pere Marquette common stock from Nathaniel Thayer, another Pere Marquette director, and from others, and had arranged for certain expansions of the road, particularly into Canada. These options first covered a maximum of 50,000 shares, with rights to 50,000 more. Subsequently, on September 27, 1902, they were increased to cover a maximum of 85,000 shares, with rights on the other 15,000, all at a price of $85 per share.

This Pere Marquette syndicate seemingly included two groups, an eastern group from New England, New York, and Philadelphia, and a St. Louis group. The syndicate agreement was subscribed as follows:

Names of subscribers.	Pere Marquette common shares.	Names of subscribers.	Pere Marquette common shares.
Eastern group (total, 74,500 shares):		**St. Louis group (total, 12,000 shares)—**	
Newman Erb	6,000	Continued:	
B. F. Yoakum [1]	5,000	Mary F. Scanlan	500
Thomas F. Ryan	5,000	Philip C. Scanlan	250
D. B. Flint	500	Thomas H. West [1]	750
Provident Life & Trust Co. (Philadelphia, Pa.)	5,000	R. S. Brookings [1]	750
B. P. Cheney [2]	2,000	W. K. Bixby [1]	750
F. H. Prince & Co	20,000	I. W. Morton [1]	500
Mark T. Cox	5,000	B. B. Graham [1]	500
E. Summerfield	1,000	Henry C. Haarstick [1]	300
F. H. Prince	20,000	Edwards Whitaker [1]	300
Frederick Ayer	4,500	Robert McK. Jones [1]	300
Charles F. Ayer	500	Daniel Catlin [1]	500
St. Louis group (total, 12,000 shares):		Irwin Z. Smith	400
Edward Mallinckrodt [1]	500	A. C. Stewart [1]	500
John F. Shepley [1]	800	John L. Boland [1]	750
M. C. Wetmore	300	Thomas H. McKittrick [1]	500
Joseph Lathrop	300	N. A. McMillan [1]	250
Wm. E. Guy [1]	200	H. P. Taussig	500
A. G. Edwards & Sons	400	L. M. Rumsey [1]	150
George O. Carpenter	250	Charles F. Bates	300
A. C. Church	500	Total	86,500

[1] Was then a director or officer of the St. Louis Union Trust Co., of St. Louis, Mo.
[2] Was then a director of the Old Colony Trust Co., of Boston, Mass.

The actual participation was somewhat different. According to the record of the Old Colony Trust Company, of Boston, the depositary, subscriptions were paid in covering only 73,115½ shares, as follows:

Subscriptions under terms of Pere Marquette Railroad Company syndicate agreement dated September 29, 1902, and payments on account of same.

Subscription receipt issued in name of—	Shares.	Amount of subscription at $85 per share.	First payment, 25 per cent.	Second payment, 25 per cent.	Third payment, 25 per cent.	Fourth payment, 25 per cent.
Provident Life & Trust Co., Philadelphia, Pa	5,000	$425,000.00	$106,250.00	$106,250.00	$106,250.00	$106,250.00
B. F. Yoakum	3,000	255,000.00	63,750.00	21,250.00	21,250.00	.....
F. H. Prince & Co	23,217½	1,973,487.50	493,371.88	493,371.87	493,371.88	501,829.37
F. H. Prince & Co. (a/c F. Ayer, subr.)	4,500	382,500.00	95,625.00	95,625.00	95,625.00	95,625.00
F. H. Prince & Co. (a/c C. F. Ayer, subr.)	500	42,500.00	10,625.00	10,625.00	10,625.00	10,625.00
F. H. Prince & Co. (a/c B. P. Cheney, subr.)	2,000	170,000.00	42,500.00	63,750.00	63,750.00	42,500.00
F. H. Prince & Co. (a/c D. B. Flint, subr.)	500	42,500.00	10,625.00	10,625.00	10,625.00	.....
Newman Erb	5,000	425,000.00	106,250.00	106,250.00	106,250.00	106,250.00
E. Summerfield	1,000	85,000.00	21,250.00	21,250.00	21,250.00	21,250.00
Street, Wykes & Co	1,000	85,000.00	21,250.00	21,250.00	21,250.00	21,250.00
Nathaniel Thayer	5,000	425,000.00	106,250.00	106,250.00	106,250.00	106,250.00
Mark T. Cox	5,000	425,000.00	106,250.00	106,250.00	106,250.00	106,250.00
Thomas F. Ryan	5,000	425,000.00	106,250.00	.....	.....	.....
St. Louis Union Trust Co. (St. Louis group)	12,000	1,020,000.00	255,000.00	255,000.00	255,000.00	255,000.00
F. H. Prince & Co	398	33,830.00	8,457.50	8,457.50	8,457.50	.....
James Campbell	.....	.....	.....	21,250.00	21,250.00	.....
J. I. Burke	.....	.....	.....	106,250.00	106,250.00	106,250.00
George R. Richards	.....	.....	.....	.....	.....	10,625.00
Charles A. Stetson	.....	.....	.....	.....	.....	63,750.00
Total	73,115½	6,214,817.50	1,553,704.38	1,553,704.37	1,553,704.38	1,553,704.37

It will be observed that after the first payments there were several transfers of interest in the eastern group. A summary of these appears below, but whether or not the actual beneficial interest passed is not disclosed. Subsequent changes in the directorate would indicate that it did not in all cases.

Pere Marquette R. R. Co. syndicate agreement of September 29, 1902. Memorandum of transfers of subscription receipts.

Date.	Transferred by—	Amount of subscription.	Transferred to—	Amount of subscription.
Dec. 11, 1902	Thomas F. Ryan	$425,000.00	J. I. Burke	$425,000.00
Dec. 26, 1902	B. F. Yoakum	85,000.00	B. P. Cheney	85,000.00
Jan. 7, 1903	do	85,000.00	James Campbell	85,000.00
Aug. 4, 1903	B. P. Cheney	85,000.00	Charles A. Stetson	85,000.00
Do	B. F. Yoakum	85,000.00	do	85,000.00
Do	James Campbell	85,000.00	do	85,000.00
Aug. 6, 1903	F. H. Prince & Co	42,500.00	George R. Richards	42,500.00

The St. Louis group also underwent changes in composition, although throughout the existence of the syndicate, and of the voting trust which succeeded it, their 12,000 shares were handled *en bloc* through the St. Louis Union Trust Company. By the time the voting trust terminated the changes in the St. Louis group had been as follows:

	Shares.
William E. Guy had disposed of his entire	200
John F. Shepley had decreased his holdings by	500
Thomas H. West had decreased his holdings by	250
John L. Boland had decreased his holdings by	250
H. P. Taussig had decreased his holdings by	100
Charles F. Bates had decreased his holdings by	150
Total decreases	1,450
M. C. Wetmore had increased his holdings by	200
Robert Abeles had acquired	100
Adolph H. Stille had acquired	100
Holbrook, Blackwelder R. E. Trust Co. had acquired	250
J. H. Allen had acquired	250
F. H. Hamilton had acquired	50
P. C. Maffitt had acquired	150
Franklin Bank had acquired	100
Morris Glaser had acquired	250
Total increases	1,450

December 5, 1902, was the last day for payment under the September options. As of that date the syndicate managers, F. H. Prince, John F. Shepley, and F. P. Pegram, entered into a "Pere Marquette share purchase" agreement with Nathaniel Thayer, Mark T. Cox, and Thomas F. Ryan, a committee representing holders of stock who had agreed to sell under the options of September

5, 1902, and had deposited their shares with the Old Colony Trust Company.

Under the share purchase agreement the vendors required payment to the extent of 25 per cent plus $400,000 on December 5, 1902, and deferred payments of 25 per cent each to be made with interest, on or before the 5th days of the succeeding months of April, August, and December, 1903, save that on the last payment there should be applied the $400,000 deposited with the first. Delivery of 25 per cent of the shares was to be made to the order of the syndicate managers contemporaneously with each of the four payments. The vendors' committee also agreed to pay to the order of the syndicate managers a banker's commission of $1 for every share paid for by the syndicate managers or by any subscriber to the syndicate agreement. Upon the order of those managers the Old Colony Trust Company paid to F. H. Prince & Company $74,866.86 as such commission in these transactions.

The agreement further provided:

> The committee shall have full power and authority to represent and act for the depositors in all matters respecting or relating to the said shares and all rights therein, and shall have full power and authority to agree to any alterations or amendments in this agreement with the consent of the syndicate managers, and this agreement may be altered or amended by the consent of the committee and the syndicate managers at any time. After the 5th of December, 1902, the committee shall use their influence to create such vacancies on the board of directors of the railroad company that three new members of the said board shall be nominated by the syndicate managers.

The vendors represented by Thayer, Cox, and Ryan deposited for sale 73,115½ shares of Pere Marquette common. Of this amount over 52,500 shares seem to have been turned in by the Thayer, Cox, Ryan, and Hunnewell interests. The Old Colony Trust Company, as it received the stock, issued voting trust certificates therefor to the beneficiaries under the syndicate agreement. Such certificates finally aggregated 90,482 shares, including 73,115 under the syndicate agreement, and 17,367 additional deposited by F. H. Prince & Company with the permission of the syndicate managers, as full payment of their subscription to the syndicate.

A reorganization of the board was to be expected shortly after December 5, 1902. It came on December 29, 1902, when there were elected as directors the following: Myron J. Carpenter, Wm. K. Bixby,[1] Newman Erb,[1] Samuel R. Shipley,[1] Thomas F. Ryan,[1 2] F. H. Prince,[1] Thomas H. West,[1] Charles Merriam, Nathaniel Thayer,[2] Mark T. Cox,[1 2] Walter Hunnewell.[2]

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[1] Were members of, or represented members of, the Pere Marquette syndicate.

[2] These four interests furnished more than a majority of the stock purchased by the syndicate.

Prince at the same time became president, and Cox and Erb vice presidents, and Myron J. Carpenter was made vice president and general manager. During the next year George H. Norman succeeded Hunnewell as a director on May 6, 1903, and when the number of directors was increased to 13 Maxwell Norman and Guy H. Norman were elected on October 20, 1903. The Normans were relatives of Prince.

The Prince syndicate with 90,482 shares of common did not own a majority control of the Pere Marquette stock. As shown already in the discussion of the company's organization, 33,222½ shares of the 280,000 issued remained in the hands of trustees for the road. This, though really treasury stock, was not recorded as such. There is no doubt that the Prince syndicate exercised a voting control, either of itself or by association with the individual interests of its members, and also through the power, which was exercised, of voting the 33,222½ shares of treasury stock.

The control by the Prince interests of much more than the syndicate holdings is indicated by the fact that on July 7, 1904, Prince & Company sold to the C., H. & D. 110,000 shares of Pere Marquette common, and that this block did not include all of the syndicate holdings. The details of this transaction appear later on.

3. *C., H. & D. syndicate, and Zimmerman-Hollins control, 1904.*—When the C., H. & D. purchased the 110,000 shares it did not thereby acquire a majority interest, but the means to such an interest was contemplated, and in fact was actually secured to it by contemporaneous transactions. Later, on March 1, 1905, actual ownership of the 33,222½ shares of Pere Marquette treasury stock was acquired, as is later recited.

It naturally followed that soon after July 7, 1904, C., H. & D. representatives went on the Pere Marquette board, and C., H. & D. nominees became its high officials. Then, after the treasury stock became the C., H. & D.'s property, by reason of its lease of the Pere Marquette on March 1, 1905, the latter's board was again reorganized, and the C., H. & D. interests, representing the Zimmerman-Hollins management, took full charge.

4. *Morgan control, from 1905.*—The next important changes came when the control of the C., H. & D., and incidentally of the Pere Marquette, passed to the Erie Railroad Company. Representatives of the Erie took charge of the Pere Marquette management on October 20, 1905. Shortly thereafter upon the rescission of the Erie's purchase of the C., H. & D. from J. P. Morgan & Company, George W. Perkins, of the latter firm, on December 4, 1905, went on the Pere Marquette board and the Erie representatives remained. It appears that Perkins more than anyone else guided the Pere Mar-

quette through the reorganization following the receivership of December 4, 1905.

In discussing the matter of stock control after the first receivership consideration must be given to the reorganization which followed. This "reorganization" of December 11, 1907, was on paper only. The thing accomplished was release of the Pere Marquette from receivership without either foreclosure or a downward adjustment of capital liabilities. The means used as a pretext was merely the consolidation of the Pere Marquette of Michigan with its subsidiary, the Pere Marquette Railroad Company of Indiana. This subsidiary will be further considered, but note may be taken here that it was only 20 miles long; that its capital stock of $500,000 was owned by the parent company; that its bonds bore the guaranty of that company; and that it had been constructed, in effect, by the parent company to piece out the latter's line toward Chicago. In this consolidation the name "Pere Marquette Railroad Company" was retained; capital stock, including first and second preferred as well as common, was provided for to the amount of $28,500,000, equaling the authorized issues of the two constituents; their funded debt and other obligations were assumed; and last, but of great importance, $5,000,000 of 6 per cent five-year debenture bonds were authorized to take up current indebtedness, including receiver's certificates, and were offered to the stockholders.

Under the consolidation plan preferred shares of the Indiana company were to be exchanged for first preferred of the new company; preferred of the Michigan company for second preferred of the new company; common of both constituents for common of the new; all on a par for par basis. But to induce subscriptions to the debentures the following offer to stockholders of the Michigan company was made as a provision of the agreement of consolidation:

ARTICLE 7.

The shareholders of the Michigan company shall have also the following rights and privileges: Every holder of preferred shares of the Michigan company shall have the right to subscribe for debentures of the new company, described in article 10, to an amount equal to 50 per cent of the par value of the preferred shares owned by him at the date when this agreement shall be filed with the secretary of state of Michigan, after having been approved by the stockholders, such subscription and the payment thereof to be made at such times and upon such terms and conditions as the board of directors shall prescribe. Upon payment in full of such subscription (less such reduction, if any, as may be made as hereinafter provided), such preferred shareholder shall have the right to exchange his said preferred shares for first preferred shares of the new corporation, par for par, instead of exchanging the same for second preferred shares as provided in article 6, and upon payment of his subscription as aforesaid such preferred share-

holder shall have the further right to exchange for such first preferred stock, par for par, additional preferred shares of the Michigan company, acquired by him after the said date, up to an amount equal to 15 per cent of the par value of the said preferred shares owned by him at the date of filing this agreement as aforesaid.

Every holder of common shares of the Michigan company shall have the right to subscribe for such debentures to an amount equal to 20 per cent of the par value of the common shares owned by him at such date when this agreement shall be filed as aforesaid.

In case the total amount of debentures subscribed for under this paragraph shall exceed $5,000,000 of debentures, the board of directors shall be authorized ratably to reduce the said subscriptions until the total amount thereof shall equal $5,000,000.

No plan of consolidation is before us other than this. Furthermore, the joint petition of the Pere Marquette and the Pere Marquette of Indiana addressed to the Michigan Railroad Commission by F. W. Stevens, then general solicitor of both roads, who shortly thereafter became associated with J. P. Morgan & Company, in requesting the approval by that body of the articles of consolidation, specifically alleged:

The said articles prescribe * * * the numbers of shares of capital stock in the new corporation, the amount of each, the manner of converting the capital stock in each of said two corporations into such new corporation—all as required by said laws—and such other details as the undersigned companies deemed necessary to perfect such consolidation. It appears by the consolidation agreement, the aggregate amount of capital stock issued *and outstanding* of the two consolidating companies is $28,500,000, and the authorized capital stock of the new company is to be the same amount, $28,500,000, divided into first preferred shares and common shares, each of the par amount of $100, the relative amounts of stock of each class to be determined in accordance with the provisions of articles 6 and 7 of the consolidation agreement. (Italics ours.)

In connection with that petition the chairman of the Michigan Railroad Commission was also informed by the same official that—

There will be no increases of amount of stock and interests of public are clearly advanced as you will find.

and again to this effect:

By arrangement with the stockholders, those who contribute to the (debenture) loan will receive a somewhat better class of stock than they now hold. * * * The total capital stock is not increased.

The files of the Michigan Railroad Commission further show that that body, having ascertained that the consolidation proposed between the Pere Marquette Railroad Company and the Pere Marquette Railroad Company of Indiana would "be in accordance with the constitution and laws" of that state, approved the same on December 10, 1907.

But despite these assurances by the Pere Marquette an increase in the capital stock liability was then contemplated, since it appears from the accounts covering the exchanges of stock that such subscribers received a stock bonus with their debentures. It will be remembered that under the lease of the Pere Marquette to the C., H. & D., March 1, 1905, the latter had acquired title to 33,222½ treasury shares of Pere Marquette. These had been returned to the Pere Marquette through the so-called Harmon-Crapo arbitration of the differences between the two roads, as related elsewhere, and in anticipation of their use in reorganization of the Pere Marquette. It was out of this treasury stock that these bonuses were paid.

The bonus issues were made on the following basis:

1. Preferred-stock holders subscribed to debentures in the amount of $4,752,120, being 50 per cent of the par of 95,042.50 shares, and received as bonus 15 per cent of the latter, or 14,256.36 shares of new first preferred stock.

2. Common-stock holders subscribed to debentures in the amount of $247,880, being 20 per cent of the par of 12,394 shares, and received as bonus 20 per cent of the latter, or 2,478.80 shares of new common stock.

3. F. H. Prince & Company received as bonus on account of the reduction of subscriptions to the debentures 395 shares of new common stock.

In connection with the bonus paid to Prince & Company, attention is called to the provision in the agreement of consolidation set out above, that in case the debentures were oversubscribed the board of directors could ratably reduce the subscriptions. Just why under such circumstances Prince & Company should have received this $39,500 par value of stock does not appear. The Pere Marquette has no information on the subject beyond the fact as reported by the shareholders' protective committee, Nathaniel Thayer, William W. Crapo, Mark T. Cox, George H. Norman, and Francis B. Hart.

The result of these exchanges and bonus issues, together with fractional share adjustments, reduced the treasury stock as of January 1, 1908, to this:

First preferred, par	$240,000
Second preferred, par	62,020
Common, par	1,870,770
Total	2,172,790

Deducting this from the $28,500,000 of capital stock authorized left 131,637 shares as the minimum required for majority control. The C., H. & D., with its 110,000 shares, did not possess such a majority. Nor was a majority thereafter to be obtained by voting the remaining treasury shares therewith. But as a practical matter the 110,000 shares continued to suffice for voting control.

The first board of the reorganized company, elected August 12, 1907, was a Morgan board. No changes of consequence occurred in

its make-up until November 5, 1909, when certain representatives of the Baltimore & Ohio Railroad Company were elected, following the latter road's entrance into C., H. & D. affairs. But even then the Morgan interest was the dominant one in the Pere Marquette board. Early in 1911, when the C., H. & D.'s 110,000 shares were finally sold to J. P. Morgan & Company, the Baltimore & Ohio directors resigned.

A little more than a year later, on April 5, 1912, the road again went into the hands of receivers. On March 9, 1914, there was another extensive change, with more residents of Michigan on the board.

The capital stock account of the Pere Marquette as of June 30, 1914, was as follows:

	First preferred.	Second preferred.	Common.
In the hands of the public	$10,929,800.00	$968,180.00	$14,370,420.00
In the company's treasury	240,000.00	62,020.00	1,870,770.00
Total, first preferred	11,169,800.00	1,030,200.00	16,241,200.00
Second preferred	1,030,200.00		
Common	16,241,200.00		
	28,441,200.00		
Stock liability for conversion	58,800.00		
Total issues	28,500,000.00		

We turn now to a consideration of the management of the property by these successive controlling interests.

V. CRAPO-THAYER MANAGEMENT, 1900–1902.

The interests which directed the consolidation of January 1, 1900, continued in management of the Pere Marquette for three years, relinquishing their control to the Prince syndicate on December 29, 1902, only two days before the expiration of the fiscal year. That change in control and management was the important event in the history of the Pere Marquette during those three years.

No change occurred to affect the company's capital stock liability. New funded securities were issued to the amount of $5,855,000, and sold for cash with a net discount of $374,125. The company assumed at par value $1,000,000 of Saginaw, Tuscola & Huron Railroad Company 4 per cent bonds, and $998,000 of the 5 per cent bonds of the Marquette Equipment Company, Limited. Assumption of the first liability was incidental to the lease of the Saginaw, Tuscola & Huron to the Pere Marquette February 1, 1900. The second covered a Pere Marquette equipment trust. Retirements in these years were:

Bonds	$1,037,065.70
Equipment trust obligations	481,000.00
Chicago & West Michigan scrip	658,387.50
Total	2,176,453.20

On December 31, 1902, the liability for funded obligations, including the Chicago & West Michigan coupon scrip, was $31,067,337.43.

As against this increase in liabilities the principal asset acquired was a lease of the Saginaw, Tuscola & Huron, 64.38 miles, from Saginaw to Bad Axe, Mich. On October 1, 1900, the property of the Muskegon Lake Railroad Company, including its line of 1.25 miles, was formally deeded to the Pere Marquette, its stock having been acquired from the Chicago & West Michigan in the consolidation of 1900. The physical property of the Pere Marquette required and received attention immediately after the 1900 consolidation, and some betterments were made in 1900 and 1901. A heavier rail standard, 75 pounds, was adopted, and some 200 miles of new rail were laid by the end of 1901. New equipment, consisting of 67 locomotives, 18 passenger cars, 2,544 freight cars, 111 company cars, and 2 car ferries, aggregated $3,698,152.43.

From the income from operations during these three years all funded debt interest was regularly paid, and dividends on the 4 per cent preferred stock were paid at that rate, as follows:

In 1900, on the entire issue of $12,000,000, the dividends on the treasury stock, 14,911 shares, being transferred to "general improvement fund."

In the first six months of 1901, on the entire issue of $12,000,000, the dividends on the treasury stock, 14,899 shares, being transferred to "suspense account."

In the remaining 18 months to December 31, 1902, only on preferred stock in the hands of the public.

No dividends were paid on common stock under this management.

The entire surplus of 1900 and 1901, respectively, $166,189.56, and $161,628.44, and an even $200,000 of that for 1902, together with the dividends already mentioned, proceeds of land sales, and minor items, were credited to a "general improvement fund." The total credit thereto in these years was $675,630.87. Against this only $420,759.88 had been charged up to December 31, 1902, leaving a balance of $254,870.99 when the Prince syndicate took the road. Apparently, also, the Crapo-Thayer management included in operating expenses installment payments made on equipment trusts, aggregating $332,577.14 in the three years, and the annual reports to stockholders refer to other additions and betterments as charged to operation. Whether such items and the items charged into the general improvement fund were additions or betterments in fact is not determinable from existing accounts and records. Such information as is available challenges the accuracy of the classification in many instances.

The policies of this administration appear sound in the main.

The operating management was a continuation of that of the constituent roads, and the property was well maintained. The surplus from operations, instead of being applied toward dividends on common stock, was set aside for further general improvements and conservation of the property.

VI. PRINCE SYNDICATE MANAGEMENT, 1903–1904.

As previously stated, when this syndicate assumed control a new management was installed. This management had a definite plan for expansion of the Pere Marquette into a through Chicago-Buffalo line. Indeed the syndicating negotiations of the promoters had been accompanied by other negotiations for lease of properties necessary to consummation of that plan. Manifestly debt expansion would have to precede property expansion. The new indebtedness was all funded, and no change was made in capital stock liability.

New fixed interest-bearing obligations put out or assumed by the Prince syndicate management during these 18 months were as follows:

	Par value.	Discount.
Sold for cash:		
P. M. consolidated 4 per cent bonds	$2,670,000.00	$365,250.00
P. M. Lake Erie division 4½ per cent bonds	3,000,000.00	105,000.00
Eastern Equipment Co. 5 per cent bonds	946,000.00	27,331.25
Issued for equipment:		
P. M. consolidated 4 per cent bonds	500,000.00	75,000.00
Eastern Equipment Co. 5s	2,000,000.00	None.
Haskell & Barker 5 per cent notes	561,633.33	None.
L. E. & D. R. Ry. Equipment 5s	112,000.00	None.
Pullman 5s	301,880.40	None.
Exchanged for securities:		
Steele roads stock—		
P. M. consolidated 4 per cent bonds	500,000.00	None.
Grand Rapids, Kalkaska & Southeastern R. R. stock—		
P. M. consolidated 4 per cent bonds	107,000.00	None.
Lake Erie & Detroit River Ry. stock—		
P. M. collateral trust 4s	2,870,000.00	None.
Assumed:		
Lake Erie & Detroit River Ry. Co. 5s (held in treasury)	3,000,000.00	.....
Grand Rapids, Belding & Saginaw R. R. 5s	260,000.00	.....
Grand Rapids, Kalkaska & Southeastern R. R. 5s	200,000.00	.....
Pere Marquette R. R. Co. of Ind. 4s	675,000.00	.....
Total	17,703,513.73	.....

The only funded debt retirements during this administration were in the form of installments due on equipment trusts.

The larger part of this increase in debt was the direct result of the acquisition of new mileage and the purchase of more modern equipment in furtherance of the Prince expansion program.

The Pere Marquette purchased outright several small roads. The mileage thus added to the system was as follows:

Date of purchase.	Name of road.	Mileage.
May 6, 1903	South Haven & Eastern	33.96
Do	Milwaukee, Benton Harbor & Columbus	26.00
May 7, 1903	Benton Harbor, Coloma & Paw Paw Lake Train	2.74
May 6, 1903	Saginaw, Tuscola & Huron	65.79
Do	Sanilac	6.89
Dec. 21, 1903	Harbor Beach & Port Hope	7.80
May 6, 1903	Bay City Belt Line	6.25
Do	Grand Rapids, Belding & Saginaw	28.94
	Total	178.37

The first three were purchased from one Frederick M. Steele, and were known collectively as the "Steele roads." The Saginaw, Tuscola & Huron was purchased from the Jesse Hoyt estate and had been under lease to the Pere Marquette, as already said, since February 1, 1900. The Sanilac and the Harbor Beach & Port Hope were organized and constructed in the interest of the Pere Marquette, and the last two listed had come into its control when it acquired its constituents on January 1, 1900. The Pere Marquette mileage was further augmented during this period through affiliation and lease arrangements with these lines:

	Mileage.
Huron & Western	11.41
Grand Rapids, Kalkaska & Southeastern	40.73
Lake Erie & Detroit River	223.41
Pere Marquette of Indiana	20.70
Total	296.25

The prices paid for the properties purchased is shown by the table following:

Road and nature of consideration.	Amount.
Steele roads:	
P. M. consolidated 4 per cent bonds	$500,000.00
Cash	226,000.00
(Above paid for entire capital stock.)	
Commissions, interest, etc	6,099.32
Saginaw, Tuscola & Huron:	
S., T. & H. 4 per cent bonds assumed Feb. 1, 1900	1,000,000.00
S., T. & H. capital stock (1 share) purchased	50.00
Sanilac: P. M. cash advances for construction	59,175.37
Harbor Beach & Port Hope: P. M. cash advances for construction	77,100.80
Bay City belt line:	
P. M. cash advances, paid for in Bay City belt stock	96,500.00
P. M. cash payments for other Bay City belt stock	3,500.00
P. M. cash advances, other	25,104.53
Grand Rapids, Belding & Saginaw:	
G. R., B. & S. 5 per cent bonds assumed	260,000.00
G. R., B. & S. capital stock purchased	24,125.00
Total	2,277,655.02

The Steele roads were three branch lines connecting with the Pere Marquette in southwestern Michigan. No accounts or records of these roads have been located, and it is impossible to say what had really been spent in their construction and equipment. From other sources it appears that their operations began prior to 1875 and continued with varying results until 1897, dividends of $3,400 having been paid in 1885 and 1886. After 1897 these roads uniformly failed to earn operating expenses, taxes, and interest, the yearly deficits in income being:

1898	$13,166.93
1899	14,638.30
1900	8,541.24
1901	15,866.31
1902	6,305.58

At the end of 1902 the consolidated result of all income and profit and loss transactions since the beginning was a deficit of $14,900.54. The price paid was for the entire capital stocks of these roads, there being no bonds, and figured $11,676 per mile. On the basis of the 4 per cent bonds issued in part payment, the transaction meant a fixed charge against the Pere Marquette annually of almost $30,000.

It has already been recited how the Saginaw, Tuscola & Huron was leased by the Pere Marquette and its bonds assumed on February 1, 1900. The supplementary transaction of purchase during this period seems to have been accomplished by the acquisition of one share of its stock. From the records available it appears that its construction and equipment cost was $1,003,090.83, although this can not be verified. Since 1882, its first year of operation, this road had never succeeded in earning its operating expenses, taxes, and interest charges. When operation was taken over by the Pere Marquette under perpetual lease, February 1, 1900, the accrued deficit was $718,736.03, but the Pere Marquette required that it be handed over free from all floating debts, and this was done. During the six years preceding its lease as a whole this road's operating income contributed not a cent to the annual bond interest charge of $40,000. At the price taken over its cost to the Pere Marquette was about $15,200 per mile. Lack of necessary accounts and records for the other roads purchased makes an analysis of their early history impossible.

These acquisitions were effected by deeds of conveyance shortly after the Prince syndicate took hold of the Pere Marquette, although all except the Steele roads had been under Pere Marquette control and management for some years before. According to the minutes of the board meeting which authorized the conveyances, on March 20, 1903, "it seemed inadvisable to maintain separately the corporate existence of the aforesaid companies." Further than this the record does not go.

Passing now to a consideration of the roads "affiliated," it appears that for the Huron & Western, which ran west from Bay City principally to serve a coal mine, the Pere Marquette paid $106,559.29 to the Grand Trunk Railway system, which seemingly had built it at that cost. At the same time the stock came into the possession of the Pere Marquette, and since 1903 the road has been operated as a part thereof. At the price paid this property cost about $9,340 per mile.

No accounts of the Grand Rapids, Kalkaska & Southeastern can be found. This line ran from Rapid City, Mich., in a generally southeastern direction, to Stratford, Mich. It was built to connect a timber tract of the Thayer Lumber Company, located in Missaukee county, with the Chicago & West Michigan. This latter road, by contract, agreed to oversee the construction, furnish the necessary rolling stock, and lease and operate the road for 10 years following its completion, paying as rental $20,000 per annum plus 15 per cent of gross receipts except upon pine.

Its minute books show that the Kalkaska road was to be constructed by William Alden Smith, under a contract dated October 21, 1897, by which the constructor was to receive as payment $200,000 in bonds and $264,000 in stock, less such as had been subscribed by him. According to the state railroad commissioner's reports the entire sum of $464,000 was treated by that carrier as cost of road and equipment.

In 1903, a few years prior to the expiration date of the lease, the Pere Marquette, through a contract with George A. Fernald and others, purchased the entire capital stock of the Kalkaska road for $107,000, payable in Pere Marquette consolidated 4 per cent bonds, and assumed its $142,000 of first mortgage 5 per cent bonds then remaining outstanding. The result was a standing minimum fixed charge against the Pere Marquette of $11,380 annually for what was originally a tap line and undoubtedly diminishing in value as the timber was being cut out. Speaking of this branch in May, 1915, the chief operating officer of the Pere Marquette said:

> It is bad. There are 14 miles of the track from Eastman Junction to the end at Stratford that is so bad that we operate it under caution, and I am about to ask the railroad commission for the authority to take it up. There is no business on the branch to warrant our continuing in operation, and we are now going up there twice a week to bring out what little business there is.

The acquisition of the Lake Erie & Detroit River Railway Company was the result of negotiations between F. H. Prince, representing F. H. Prince & Company, and F. H. Walker, representing Walker Sons, of Walkerville, Ontario, which seemingly culminated on August 20, 1902, and were summarized in an exchange of letters

on that day. Walker had offered this property to the Crapo-Thayer management for $6,000,000 as far back as February, 1902, but the offer had been declined. This arrangement of August 20, 1902, was before the Prince syndicate had secured its written options on Pere Marquette stock from Nathaniel Thayer and others (see *ante*, p. 24), and after those options had been secured a more formal contract was entered into between F. H. Prince & Company and Walker Sons, dated September 17, 1902.

Briefly, Walker Sons, owning the entire capital stock, 14,000 shares of $1,400,000 par value, of the Lake Erie & Detroit River, offered to sell the same to F. H. Prince & Company at $205 per share, payable in Pere Marquette 4 per cent 20-year collateral trust gold bonds at par in an aggregate of $2,870,000, bearing interest at 3 per cent for the first two and one-half years and 4 per cent thereafter. The road was to be free from floating debt when the contract should be finally consummated. Prince accepted upon the understanding that, if Thayer should not carry out his understanding with Prince to sell Thayer's large Pere Marquette holdings, Prince should not be liable for failing to deliver the Pere Marquette bonds. The letters of August 20, 1902, went no further, but the contract of September 17, 1902, provided that the National Trust Company, Limited, of Toronto, Ontario, should be trustee under the indenture securing the $2,870,000 of bonds, and that the agreement should be carried out with the Pere Marquette as purchaser. Prince had meantime secured his written options on 100,000 shares of Pere Marquette stock from Thayer and others. See *ante*, page 24.

It was also in the more formal agreement of September 17, 1902, that the bonds of the Lake Erie & Detroit River were first mentioned in the documentary records. Of these bonds there had been issued $3,000,000 dated August 1, 1902, and bearing interest at 5 per cent per annum for their entire term of 30 years. The National Trust Company, Limited, of Toronto, Ontario, was trustee under the mortgage. Evidently those bonds had not been marketed, certainly not beyond Walker Sons, else section 6 of that contract could hardly have permitted "certain changes with respect thereto." Those changes, it should be noted, were to be made only "provided that the total charge is not increased thereby or the security of the said 14,000 shares of stock impaired."

On December 3, 1902, and thus prior to exercise by Prince on December 5, 1902, of his option, the executive committee assumed for the Pere Marquette his contract of September 17, 1902, to buy the Lake Erie & Detroit River stock. Then the board, on December 15, 1902, approved the action of the executive committee and called a stockholders' meeting for January 20, 1903, to ratify that stock pur-

chase. Before that meeting, and, in fact, immediately upon its reorganization in the syndicate interest on December 29, 1902, the board of directors had approved the form of the bond to be issued for the Lake Erie & Detroit River stock. When the stockholders met on January 20, 1903, in Detroit, Prince, Erb, and Cox, with Myron J. Carpenter, the then recently elected vice president and general manager of the company, were the only persons in attendance. That meeting ratified and approved the previous action of the executive committee and board of directors with respect to the purchase of the Lake Erie & Detroit River stock, and further specifically authorized the issue of $2,870,000 of collateral trust 20-year 4 per cent gold bonds under an indenture whereby the shares acquired should be assigned to the National Trust Company, Limited, of Toronto, as trustee. These bonds were dated January 1, 1903, were issued in February, 1903, and were offset on the books by an asset account of $2,870,000 styled "Lake Erie & Detroit River Railway, stock owned."

There still remained to be carried out the provision of the Prince-Walker agreement as to purchase of $3,000,000 bonds of the Lake Erie & Detroit River at 103½. The Pere Marquette directors in special meeting on June 9, 1903, syndicate interests only being represented, voted:

> That this company accept from Messrs. F. H. Prince & Company an assignment of the contract dated September 17, 1902, between Messrs. F. H. Prince & Company, the Canadian Bank of Commerce, and the Dominion Securities Company for the purchase of $3,000,000 5 per cent first mortgage gold bonds of the Lake Erie & Detroit River Railway Company and that this company assume all rights and obligations of said F. H. Prince & Company under the said contract and relieve said F. H. Prince & Company of all obligations in respect thereof.

The minutes recited that F. H. Prince & Company in making that agreement had acted in the interest of the Pere Marquette, and would assign the same without commission or other charge.

To accomplish this undertaking the Pere Marquette issued $3,000,000 of its own 4½ per cent 30-year gold bonds, N. W. Harris & Company and Robert Winthrop & Company having theretofore agreed to purchase the same at a price of 96½, or to purchase 5 per cent bonds at 103½. The board and executive committee determined upon the 4½ per cent rate because "a great saving will accrue to the company if bonds bearing 4½ per cent interest per annum be issued instead of those bearing 5 per cent." The Pere Marquette was not at that time issuing other bonds at an interest rate exceeding 4 per cent. These new 4½ per cent bonds are the so-called Lake Erie division bonds, and had pledged as security thereunder the Lake Erie & Detroit River Railway Company bonds which had been guaranteed,

principal and interest, by the Pere Marquette. All this was ratified and approved by the stockholders on July 15, 1903.

To complete the arrangements the Lake Erie & Detroit River, by contract as of October 1, 1903, but made December 17, 1903, when Pere Marquette appointees were in office, granted to the Pere Marquette exclusive operating rights over the Canadian lines. The prime consideration for this was:

1. The payment of the interest on the $3,000,000 bonds of the Lake Erie & Detroit River, and all other fixed charges and operating expenses.

2. The setting apart out of the earnings of the Lake Erie & Detroit River as conducted by the Pere Marquette, of the amount of interest on the $2,870,000 bonds given in payment of the Lake Erie & Detroit River stock, being a sum to equal a dividend of 6.15 per cent on the capital stock until June 30, 1905, and a dividend of 8.20 per cent thereafter.

The Pere Marquette's Canadian mileage is supplemented east of St. Thomas by the trackage rights over the Michigan Central, used for freight only, to the Niagara frontier. The operations over all these Canadian lines are accounted for as a part of the system, but an allocation of revenues and expenses on formulæ of the Pere Marquette officials convinces them that those lines pay their own way. Their bond interest was paid upon court orders during the recent receivership, as it was in the former. Whether it is actually earned by those lines is a matter of controversy between Canadian and American bondholders of the system.

The accounts of the Lake Erie & Detroit River as written into the books of the Pere Marquette showed as cost of road, with final adjustments, $4,659,891, offsetting liabilities being:

Lake Erie & Detroit River capital stock	$1,400,000
Lake Erie & Detroit River first mortgage 5 per cent bonds	3,000,000
Lake Erie & Detroit River equipment 5 per cent bonds	112,000
Lake Erie & Detroit River current liabilities, net	147,891

The books of the Lake Erie & Detroit River are neither adequate nor sufficiently continuous to permit an analysis of the cost of road asset. The road's income and profit and loss transactions beginning prior to January 1, 1892, and including the business of the London & Port Stanley Railway, resulted in an accumulated surplus of $193,468.13 at the end of 1901. In 1902 there were extraordinary charges made to both income and profit and loss, including $13,856 paid in dividends, and these left the road on December 31, 1902, with a deficit of $13,955.57. Those dividends, according to the records available, were the first ever paid. In 1903, under Pere Marquette control as shown above, gross revenues increased from the $640,018.92 of 1901 to $968,875.26, practically 50 per cent, whereas expenses increased less than 30 per cent. The result permitted pay-

ment of the bond interest of $150,000 and stock dividends of $86,10(all according to contract, it will be observed, and left a surplus o $12,003.51.

In pursuance of the same object, the expansion of the Pere Mar quette into a Chicago-Buffalo through line, there came in 1903 th(extension toward Chicago, in the name of the Pere Marquette Rail road Company of Indiana. This company was incorporated in th(interest of the Pere Marquette of Michigan March 9, 1903, becaus(the latter had no power to condemn land under the laws of Indiana. It was expected to build as far west as Hammond, Ind., within the Chicago switching limits, a total distance of about 46 miles. About the same time there was also organized the Marquette Construction Company, a New Jersey corporation controlled by the Prince syndicate, or certain members thereof.

On May 12, 1903, the construction company and the Pere Marquette of Indiana entered into a contract covering the construction and equipment of the section of 22 miles from New Buffalo, Mich., to Porter, Ind. This was an "exhaustive contract," in the language of a Pere Marquette official of that day, under which the construction company was required to turn over to the Pere Marquette of Indiana a completed railroad and the equipment necessary to its proper operation, the consideration to be "the total capital stock of the railroad company amounting at par to $500,000 full paid and nonassessable," to be delivered upon the execution of the contract, and "an amount at par equal to $25,000 per mile of single-track line or $35,000 per mile of double-track line, exclusive of switches and sidings," of the railroad's 4 per cent first mortgage bonds. For these securities the road was to be fully constructed and completed by the construction company and conveyed to the railroad company free of liens and encumbrances. The bond grant per mile was the limit authorized by the railroad company's first mortgage. The contract also provided that before delivery of the bonds the construction company should procure the guaranty of both principal and interest thereof by the Pere Marquette. This provision had been anticipated, for on March 20, 1903, when the directors of the Pere Marquette had authorized the construction in Indiana, they resolved that—

> The said construction company shall transfer to this company all the shares of the capital stock of the Pere Marquette Railroad Company of Indiana in consideration of the guaranty by this company of the principal and interest of the first mortage 4 per cent 30-year gold bonds of the said railroad company.

This arrangement was effectuated on May 15, 1903, only three days after the construction contract was entered into, by a formal assignment from the construction company of the entire capital stock of the Indiana company to the Pere Marquette and an agreement by

the latter to indorse its guaranty on the bonds as had been contemplated.

It very clearly appears that the construction company deemed that the details of its accounts and records were of no concern to the Pere Marquette, because under its "exhaustive contract," the construction company's obligation was merely to turn over the completed railroad for the securities. The Pere Marquette, therefore, could not produce those accounts and records, and the opening accounts of the Pere Marquette of Indiana were in fact written up several years after the transactions had occurred.

The construction in Indiana was 20.7 miles of single track, for which, under the contract and according to the certificate of the engineer of the Pere Marquette, bonds should have been issued at the rate of $25,000 per mile to the amount of $517,500. Bonds were issued for $575,000, but why can not be said on the state of the record. Subsequently an additional $100,000 of bonds were issued to Newman Erb, for and on account of the construction company, and in order to pay for and provide the Chicago terminals, not specified in the construction contract. Of the $85,000 realized from these bonds, $40,842.10 was expended on the terminals, mainly for real estate and the balance, with interest, $45,178.52, was turned back to the railroad. All these were the 4 per cent first mortgage bonds of the Pere Marquette of Indiana, guaranteed by the parent Pere Marquette. On the first $575,000 the discount amounted to $108,866.21, as reported by the construction company, or about 18 per cent. That same year the Pere Marquette's 4 per cent consolidated mortgage bonds sold at 92½ in March and April, and at 85 thereafter, and the last $100,000 of bonds of the Indiana company, those turned over to Newman Erb, also brought 85.

In its work on the Indiana section the gross expenditures by the construction company were $465,199.18, and it turned back to the Pere Marquette of Indiana an unexpended balance of $934.61. But of those total expenditures almost $300,000 was for work done by the parent Pere Marquette itself, while substantially $130,000 more was paid to one contractor, apparently for grading and surfacing. An even $20,000 of the remainder was paid for the private car "Grand Rapids," that being, so far as can be ascertained, the only expenditure under and in satisfaction of the provision of the construction contract which required the construction company with the approval of the railroad to "purchase and provide such equipment as may be necessary to the proper operation of said line," to the extent of $1,000 per mile constructed.

It was far from a "completed railroad" which the construction company turned over to the Pere Marquette of Indiana. That is

evidenced by the fact that the parent company, beginning in May 1904, with $180,733.59, spent in all $240,109.69 for work on its subsidiary line, including the Chicago terminals. This was partially paid by the cash balances unexpended of the bond issues to the construction company; the remainder, $193,996.56, was carried as due the Michigan company.

The Pere Marquette of Indiana treated its issue of $675,000 in bonds and $500,000 in stock as its cost of road. In fact, the construction cost on the face value of all the records which can be located was only $734,931.81. The parent Pere Marquette, because it assumed as its own liability the $675,000 of bonds of the Indiana company which it had guaranteed, wrote up the same as its "Pere Marquette Railroad of Indiana, cost of road." Its $500,000 par value of the Indiana company's capital stock was carried at a value of $193,995.56 which was the balance remaining due to it for advances for construction of the Indiana line.

This Indiana mileage the Michigan corporation treated as "leased" from its completion until the two roads were consolidated in 1907

Operation into Chicago began about January 1, 1904, the distance west of Porter being covered by trackage rights for 17.94 miles over the Lake Shore & Michigan Southern Railway to Pine, Ind., and for 34.20 miles over the Chicago Terminal Transfer Railroad, from Pine to the Grand Central station in Chicago.

Due to the work of its predecessors, the road when the Prince management took hold was in a condition good enough to run along for a year or two with scant attention and without any extraordinary betterment work. The new management took advantage of this, and it seems to have reversed the maintenance and betterment policy of the Crapo-Thayer management. In this connection it is to be kept in mind that the Prince management were appointees of a syndicate holding a large investment in the road's common stock, which had never paid a dividend. That syndication, to be sure, effected a control of the road, but control alone could not, quite evidently, have given to the stock any value much greater than the $85 per share at which it had been syndicated. Something more was needed to justify a sale price which would return any great profit to the promoters Their aim was to put the common stock in the list of dividend payers and this they accomplished in the manner shown below. Even then additional justification was apparently considered necessary for the sake of the record in the sale of the stock to the C., H. & D. at $121 per share on July 7, 1904, as is evident from the insertion in the C., H. & D. board minutes of the Odell "recommendation." See *post*, page 104.

Large increases accrued in the capital investment accounts during the Prince régime, being up to June 30, 1904, as follows:

Investment in road and equipment	$8,663,888.48
Investments in affiliated companies	12,549,378.22
Investments, all other	59,151.00
Total	21,272,417.70

Representative of this total are the following items:

Mileage acquired in United States	$1,105,398.68
Mileage control in United States	253,211.47
Mileage control in Canada	10,529,891.00
Additions and betterments, net	370,631.79
General improvement fund, net	154,126.10
New equipment	6,269,328.36
Stocks of other companies	214,251.00
Advances to affiliated companies, net	922,755.28
Miscellaneous property in Canada	55,321.19
Pere Marquette R. R. of Indiana bonds assumed	675,000.00
Grand Rapids, Kalkaska & Southeastern bonds held by trustee	58,000.00
Miscellaneous items	102,800.33
Discount, etc., on securities	561,702.50
Total	21,272,417.70

The mileage acquisitions have already been detailed. It should be said that in the figures above there are included as part of the cost of such acquisitions, minor items other than the straight cost. As to the Canadian lines the Pere Marquette books carry as assets (1) the Lake Erie & Detroit River stock purchased and held in trust at a value of $2,870,000; (2) the Lake Erie & Detroit River bonds, par value $3,000,000, purchased and pledged; and (3) the book cost of the Canadian lines, transferred from the Lake Erie & Detroit River books, and included above at $4,659,891. This latter item, on the face of the contracts governing the acquisition of those lines is, of course, a duplication which the company does not include in its annual reports to this Commission.

It has already been said that the Prince people inherited from their predecessors a "general improvement fund" credit of $254,870.99. They added thereto nothing whatever from current income, but from other sources increased it to $278,530.95, and at the same time charged against it work amounting to $432,657.05, creating a balance to be subsequently financed of $154,126.10 on June 30, 1904. It will be noted that there was very little of other additions and betterments, even on the face of the accounts and records. Nor does it appear that any betterments were included in operating expenses during these 18 months.

New equipment was of course necessary for effective entry by the Pere Marquette into the group of through Chicago-Niagara frontier

lines. For such nearly $4,500,000 of the security issues of this management were put out, and these were supplemented in most of the equipment purchase contracts by cash payments which bring the total expenditures for new equipment up to over $6,000,000. The equipment acquired was the following:

Locomotives	65
Passenger service cars	30
Box cars	6,150
Coal cars	900
Stock cars	250
Cabooses	82
Wrecking crane	1
Car ferries	2
Transfer boat	1

The income and operating expense accounts of these 18 months up to June 30, 1904, must be considered in the light of the increased mileage and equipment over those of December 31, 1902; and in view of the fact that the operations of the Canadian lines were not thrown into the operating accounts of the Pere Marquette until January 1, 1904. Operations at that time extended only to St. Thomas, Ontario.

These income and operating expense accounts were deliberately manipulated and distorted, as will be shown below, but even as they stand in the books of the company they evidence quite clearly that ordinary maintenance was deferred by the Prince management. This appears from the following comparison of its operations with those of the previous and the succeeding years, and it may be explained that in July, 1904, the Canadian operations were extended by trackage rights to the Niagara frontier.

Item.	Calendar year 1902.			Calendar year 1903.		
	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.
Operating revenues	$9,955,375.07	*Per cent.*	*Per cent.*	$10,387,560.37	*Per cent.*	*Per cent.*
Maintenance of way and structures	1,480,422.42	14.87	21.71	1,143,687.61	11.01	17.20
Maintenance of equipment	1,040,473.87	10.45	15.26	933,539.19	8.99	14.04
Transportation expenses	4,066,109.43	40.84	59.65	4,302,315.52	41.41	64.69
General expenses	230,474.03	2.32	3.38	270,777.20	2.61	4.07
Total operating expenses	6,817,479.75	68.48	100.00	6,650,319.52	64.02	100.00
Miles operated at close of period—single track	1,898.27			[1]1,983.59		
Locomotives operated at close of period	266			338		
Passenger cars operated at close of period	280			331		
Freight cars operated at close of period	9,509			14,518		
Company cars operated at close of period	267			311		

Item.	Six months to June 30, 1904.			Fiscal year to June 30, 1905.		
	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.
		Per cent.	*Per cent.*		*Per cent.*	*Per cent.*
Operating revenues	$5,456,935.00			$12,667,420.34		
Maintenance of way and structures	502,006.49	9.20	12.91	1,715,231.99	13.54	17.79
Maintenance of equipment	560,357.16	10.27	14.41	1,547,547.84	12.23	16.05
Transportation expenses	2,676,218.97	49.04	68.84	5,996,491.55	47.34	62.20
General expenses	149,216.95	2.73	3.84	381,404.75	3.01	3.96
Total operating expenses	3,887,799.57	71.24	100.00	9,640,676.13	76.11	100.00
Miles operated at close of period—single track	2,211.65			2,397.74		
Locomotives operated at close of period	380			399		
Passenger cars operated at close of period	340			359		
Freight cars operated at close of period	15,412			17,376		
Company cars operated at close of period	316			406		

[1] Canadian mileage not included.

Work on roadway and track generally, and maintenance of bridges, ties, and rails all diminished greatly. No new rail work whatever appears in the 18 months' total of operating expenses, although the report to stockholders states that 52.9 miles of 75-pound rail were laid in 1903 and charged as roadway and track expense. No such rail laying is shown in the road's rail records as set forth on page 66 herein. What was true of the road and structures was true also of the equipment, as is especially apparent in the light of the great increases in rolling stock then put into operation. In the two maintenance items, covering road and equipment, the reduction in 1903 was $443,669.49, and in the following six months it was on the basis of $396,168.99 for one year. This, it will be noted, despite the inclusion of the operations for the lines in Canada in 1904. Contemporaneously during these same 18 months gross revenues increased, and the other operating expenses, transportation and general, all increased. Among the general expenses salaries of general officers jumped over 30 per cent in 1903 and almost 60 per cent to June 30, 1904.

The first of the income account manipulations was designed to remove from the operating expenses of 1903 extraordinary charges resulting from a wreck at East Paris, Mich. It was accomplished by creating out of surplus a fund to care for the wreck expenses. The surplus account, it may be mentioned, included a balance from the previous year of $213,477.09, another inheritance, as it were. In the months January–June, 1904, there were other manipulations of the income and expense accounts, the usual method being to bury

legitimate charges in "suspense" items, or put them through profit and loss direct, avoiding their inclusion in operating expenses.

It clearly appears from the "authorities" which a seemingly conscientious accounting official caused to be attached to the entries that the instructions emanated from the syndicate head and president of the road, Prince, in Boston, and reached the auditor through Carpenter, the vice president, in Detroit. The latter's correspondence speaks, in January, 1904, of—

> * * * $40,000, which I have been carrying as a nest egg, fearing bad results in December and January.
>
> This, of course, can not come in as an earning, but will probably be very useful in figuring out our net results for these months.

The next month a Prince telegram to Carpenter stated:

> For certain reasons I wish to have the deficit for January appear under one hundred thousand, so suggest you make a credit of thirty-odd thousand so as to make the deficit appear under one hundred thousand.

The same day, February 23, 1904, Carpenter instructed the auditor to "use one-half the $40,000 unless otherwise advised." There followed a reduction of $20,000 in "repairs locomotives" and "repairs freight cars," that amount being charged to "suspense material," an open account.

Later in connection with this same six months' period, Carpenter gave instructions as to reporting tie expenses in this wise:

> Charge same amount as was charged last year, adding thereto about the same per cent of increase as our earnings increase.

About May, 1904, Carpenter advised the auditor regarding $28,000 which had previously been eliminated from roadway repairs:

> Please bring this to my attention from month to month and we will see how we can best dispose of it. I think I shall have to depend upon you to keep the earnings up in order that we may dispose of it quickly.

Whatever the method used, the ultimate aim and the invariable ultimate result was an unjustifiable increase in the ultimate income balance. For these 18 months that unjustifiable increase by such methods was $716,380.19.

The initial common-stock dividend was paid August 31, 1903, at the rate of 1 per cent; the second, at the same rate, came on December 31, 1903; the last under the Prince management was in March, 1904, also 1 per cent. The manipulations of operating expense accounts, it will be noted, followed close upon the December, 1903, dividend payment.

The result of these extraordinary efforts produced in 1903 an apparent net income of $1,604,674.71. Of this the dividends consumed $703,542. But in the following six months' period the net was only

$155,743.32, and the dividend disbursements were $351,847. In the 18 months the total net was $1,760,418.03; if the manipulations are considered it was only $1,044,037.84. This, it must be remembered, was the result even under a policy of deferring maintenance. The dividends paid were $630,432 on preferred, and $424,957 on the common, the total, $1,055,389. Even what on the face of the accounts was a good year, 1903, with $1,604,674.71 final net income, greater by over $600,000 than in any previous year, was not, in truth, as successful as was 1902, when the increased mileage and equipment, the deferment of maintenance, the manipulations, and the other necessary appropriations of net income are considered.

Thus it appears, even without allowing for charges other than dividends against the net income, that the common-stock dividends of the Prince management were never in fact earned, but were secured at the expense of proper maintenance. For it can not be forgotten that while well-maintained railroads can, if decrease in business and consequent reductions in revenues demand, retrench on maintenance and reduce that item for a short period, it has to be made up in the end.

The last common-stock dividend of this management, in March, 1904, was declared at about the time when the Prince interests were maneuvering to unload their Pere Marquette stock on the C., H. & D. at $125 per share. Looking to that end these dividend payments were required as a price justification.

VII. ZIMMERMAN–HOLLINS MANAGEMENT, 1904–1905.

The transfer of Pere Marquette management from the Prince syndicate to a C., H. & D. stock syndicate followed upon Prince's sale to the C., H. & D., on July 7, 1904, of 110,000 shares of Pere Marquette common stock at $125 per share. That sale was the result of the operations of the C., H. & D. stock syndicate formed May 19, 1904, and participated in to a considerable extent by members of the Prince syndicate. Among the other participants was Eugene Zimmerman. The C., H. & D. stock syndicate as first constituted was succeeded in its control of both roads, on August 16, 1904, by the Zimmerman-Hollins combination of interests, resulting from the entrance of H. B. Hollins & Company into C., H. & D. affairs to accomplish the retirement of the latter road's 5 per cent preferred stock. As Zimmerman and other C., H. & D. syndicate members continued on in the Zimmerman-Hollins control, it seems proper that this entire period should be considered as one in the history of both roads.

The many details of the events of these 15 months center in the C., H. & D. and are set out at length in the history of that road

herein. So far as the transactions affected the Pere Marquette, a résumé is presented here.

1. The C., H. & D. stock syndicate was formed under an agreement of May 19, 1904, members of the Prince syndicate being among its promoters and subscribing thereto to a considerable extent. Pledges made by the C., H. & D. syndicate promoters and affecting the Pere Marquette, were the following:

(*a*) C., H. & D. should purchase control of the Pere Marquette at $125 per share.

(*b*) C., H. & D. and Pere Marquette should jointly and severally guarantee the $3,500,000 par value bonds of the Toledo Railway & Terminal Company, and $150,000 par value bonds of the Toledo Riverside Railway Company and enter into a joint and several agreement for the use of the terminal facilities thereof at Toledo, Ohio.

(*c*) C., H. & D. and Pere Marquette should enter into a preferential interchange agreement by which the C., H. & D. was also to be given an option to lease the Pere Marquette.

(*d*) Express privileges on the Pere Marquette should be transferred to the United States Express Company, a C., H. & D. syndicate subscriber.

(*e*) C., H. & D. and Pere Marquette should jointly purchase the $4,206,000 par value stock of the Chicago, Cincinnati & Louisville Railroad Company by issuing joint bonds for $3,500,000, the C., C. & L. stock being held by subscribers to the C., H. & D. syndicate, and also guarantee C., C. & L. bond interest payments.

(*f*) C., H. & D. and Pere Marquette should purchase car equipment from the American Car & Foundry Company, a subscriber to the C., H. & D. syndicate, and represented in the Prince syndicate.

(*g*) C., H. & D. and Pere Marquette should purchase locomotives from the American Locomotive Company, a subscriber to the C., H. & D. syndicate.

(*h*) C., H. & D. and Pere Marquette should purchase air-brake equipment from the New York Air Brake Company, a subscriber to the C., H. & D. syndicate.

2. The C., H. & D. board was reorganized, control passing to the syndicate July 7, 1904, and 110,000 shares Pere Marquette common stock was purchased by C., H. & D. from Prince & Company, at $125 per share. Other pledges of the promoters carried out at same or subsequent meetings.

3. Pere Marquette 4 per cent refunding mortgage bonds were issued to the amount of $9,207,000 and negotiated through the C., H. & D., which indorsed them, following which all but $649,000 were sold through syndicates dominated by the Hollins-Zimmerman interests.

4. The Pere Marquette was leased to the C., H. & D. March 1, 1905, and as an incident of that lease the latter road acquired title to all Pere Marquette treasury stock.

5. Entire $3,500,000 par value of practically worthless stock of the Toledo Railway & Terminal Company was bought by Hollins & Company from the promoters of that road, who were subscribers to the C., H. & D. syndicate, at $41 per share, sold to the C., H. & D. at $42 and by it sold to the Pere Marquette at $47, as one transaction.

6. Control of water-front properties of the Toledo Railway & Terminal Company at Toledo were fraudulently transferred through the Great Central Dock Company to the Detroit, Toledo & Ironton Railroad Company, in which the Hollins-Zimmerman combination had secured a controlling interest.

7. Hollins control of C., H. & D. was purchased by Morgan & Company for Erie Railroad Company, which temporarily took control of the Pere Marquette.

The Pere Marquette control and management passed from the Zimmerman-Hollins interests to the Erie Railroad Company October 20, 1905, and when the Erie rescinded its purchase of the C., H. & D. stock, which carried the Pere Marquette control with it, both the two latter roads went into receivership on December 4, 1905. It is impracticable now to make a balance sheet presentation of the Pere Marquette's condition on either date, but that condition can be adequately set forth as of June 30, 1905, and due allowance made for subsequent transactions. The Erie management attempted no capital financing, and that of the Zimmerman-Hollins people after June 30, 1905, was a minor continuation of what was then under way.

No new liability was written up as the result of the transfer to the C., H. & D., incident to its lease of the Pere Marquette March 1, 1905, of the latter's 33,222½ shares of treasury stock. That stock at that time was already carried as outstanding because of the circumstances attending its original issue at the time of the road's organization in 1900. See *ante*, page 21, et seq.

Of funded securities the new issues written up from July 1, 1904, until the beginning of the first receivership were as follows:

Description of issue.	July 1, 1904, to June 30, 1905.		July 1, 1905, to Dec. 4 1905.	
	Par value.	Discount.	Par value.	Discount.
Eastern Equipment Co. 5 per cent equipment notes.	$255,000	$11,112.60	.....	.....
Robert Winthrop & Co. 4½ per cent equipment notes.	1,520,000	None.	.....	.....
P. M. refunding mortgage 4s.....	8,361,000	1,092,345.00	$846,000	$122,177.50
Total.....	10,136,000	1,103,457.60	846,000	122,177.50

It is to be observed that no entries were ever made in the accounts of the Pere Marquette in connection with the purchase of the capital stock of the Chicago, Cincinnati & Louisville Railroad Company. The details of that transaction are primarily an incident of the operations of the C., H. & D. stock syndicate, and will be found in the C., H. & D. section of this report. But though its accounts are bare the records of the Pere Marquette show quite fully the participation of its management in that transaction.

The original Chicago, Cincinnati & Louisville stock purchase contract of July 1, 1904, was signed on behalf of the Pere Marquette by Newman Erb, vice president, and thereunder the road bound itself to purchase the entire $4,206,000 capital stock of the Chicago, Cincinnati & Louisville for $3,500,000 in Pere Marquette 4 per cent gold bonds, and to reserve the $500,000 remaining of that issue for betterment of the road purchased. The Pere Marquette also guaran-

teed prompt payment of the interest on the $6,600,000 bonded indebtedness of the Chicago, Cincinnati & Louisville. This contract was approved and the bond issue authorized by the board on June 28, 1904, the directors present being George H. Norman, Guy Norman, Nathaniel Thayer, Frederick H. Prince, Maxwell Norman, Mark T. Cox, and Charles Merriam, with Bradley W. Palmer of counsel. The stockholders' unanimous approval was voted the next day, June 29, 1904, at a meeting where only Pere Marquette subordinate officers and employees were present, and of which the minutes recite:

> In the absence of the chairman, president, and all the vice presidents, the meeting was called to order by Mr. J. E. Howard, and Mr. George F. Weidman was selected as chairman.

Howard was the general auditor of the Pere Marquette, and the road's annual report for 1904 shows George F. Weidman as its superintendent of telegraph. As George H. Norman, chairman, Prince, president, Erb, first vice president, and Cox, second vice president, were members of one or the other or both of the two syndicates, the Prince syndicate and the C., H. & D. stock syndicate, involved in putting the deal through, and as Carpenter, the only remaining vice president, was the operating manager of the road and the nominee of the Prince syndicate, the foregoing recital in the minutes is significant and would seem to have been inserted with design. At this meeting the treasury stock, except 9½ shares, was voted in favor of the purchase of the capital stock of the Chicago, Cincinnati & Louisville by Howard as substitute proxy for Carpenter under instructions from the general solicitor, Frederick W. Stevens. Stevens acted on the authority of George H. Norman, chairman of the Pere Marquette board, a member of the C., H. & D. syndicate, and a relative of Prince. That treasury stock was not necessary to a majority.

The Pere Marquette records also evidence the subsequent purchase by the C., H. & D. of a one-half interest in the Chicago, Cincinnati & Louisville stock, and the arrangement for the issue of joint and several bonds of both purchasers in payment. It further appears that the Pere Marquette actually issued its bonds as agreed, and one of the first acts of the management installed by the Erie was to safeguard the Pere Marquette from the results of such issue. This action culminated in the so-called *Bradford Case*, *Pere Marquette R. Co.* v. *Bradford et al.*, 149 Fed. Rep., 492, which was finally settled as told in the C., H. & D. section of this report. Neither in the *Bradford Case* nor in the evidence before us in this proceeding is it explained why the bond issue and the stock acquisition were never written up in the Pere Marquette accounts.

Throughout this time, down to the beginning of the first receivership, there were reductions in the funded debt, mainly resulting from maturing payments on the equipment trusts. Only a negligible retirement of the straight bond issues was effected.

The additional issues of Eastern Equipment Company notes covered the remainder of this trust, bringing the total issue up to $3,201,000. The Winthrop trust furnished to the company—

Locomotives	20
Box cars	1,250
Coal cars	1,000
Convertible ballast cars	100

But for this equipment there were cash payments, in addition to the trust notes, to the amount of $457,266, realized from the sale of the refunding mortgage 4 per cent bonds.

These Pere Marquette refunding mortgage 4 percents were the bonds of which the C., H. & D. purchased and guaranteed $9,207,000, the total amount issued during the Zimmerman-Hollins régime. The details of that transaction and the syndicating arrangements incident thereto are all set out in the C., H. & D. section of this report. In the issue of these securities the Pere Marquette suffered a discount of $1,214,522.50. The records indicate that the cash realized, $7,992,477.50, was disbursed for the following:

Toledo Railway & Terminal Co.'s stock	$1,645,000.00
Wolverine Coal Co. stock (balance)	62,500.00
Retirement of equipment obligations	1,179,724.81
Retirement of G. R. N. & L. S. R. R. Co. bonds	19,000.00
Pere Marquette Steamship Co. advances	75,000.00
Cash payment on Winthrop equipment	457,266.00
Repayment of loans	3,625,000.00
Dividend on preferred stock	210,000.00
Bond interest	150,000.00
Audited vouchers (including miscellaneous expense items)	393,041.52
Balance available for additions and betterments	175,945.17
Total	7,992,477.50

The condition of the finances of the company about this time and for some time before made it necessary for the management to provide ready cash to meet the current obligations then outstanding. From the moneys received from the issue of bonds $3,625,000 was used to take up notes on which cash had been raised to meet such obligations of this and the former management.

It is significant that by June 30, 1905, the Zimmerman-Hollins management had reduced to $700,000 the loans and bills payable, which had aggregated $1,837,151.65 the year before. Special deposits had been made to cover a half million dollar liability for

matured interest unpaid, but the cash was overdrawn by some $675,115.42 net on June 30, 1905.

An additional amount of $1,179,724.81 was needed from the proceeds of these bonds to meet the increasing payments on equipment purchased and retirement of equipment trust issues. Also, in order to fulfill the company's obligations in respect of the purchase of the 35,000 shares of Toledo Railway & Terminal Company stock, $1,645,000 was necessary, and this amount was supplied from the cash received from the sale of these bonds. This company will be referred to herein as the "terminal company." The details of this latter transaction are recited at length in the C., H. & D. section of this report, and in Appendix 12.

Indication that the increase of $10,136,000 in interest-bearing securities meant little in the way of new property is found in the fact that in the 12 months to June 30, 1905, the investment accounts increased only $7,079,521.10, although funded debt retirements required only $1,198,724.81. This $7,079,521.10 was represented by the following:

1. Capital stock, Toledo Ry. & Terminal Co., 35,000 shares	$1,645,000.00
2. Capital stock, other affiliated companies	87,716.30
3. Advances to Toledo Ry. & Terminal Co	78,750.00
4. Advances to Chicago, Cincinnati & Louisville R. R. Co	323,276.06
5. Advances to other affiliated companies	334,457.84
6. Miscellaneous physical property	11,425.45
7. Sinking fund deposits	15,000.00
8. Equipment	2,294,707.31
9. General improvements, additions, and betterments, net	1,024,826.71
10. Improvements on Canadian property	20,671.18
11. Discount, commissions, and expenses on securities	1,242,690.25
12. Expenses Prince voting trust	1,000.00
Total	7,079,521.10

Furthermore, items 1, 3, and 4 in the above list were bad investments of over $2,000,000 cast upon the Pere Marquette as incidents of the operations of the C., H. & D. stock syndicate and the Hollins-Zimmerman combination of interests which succeeded it. Items 11 and 12, aggregating nearly one and a quarter million dollars more, manifestly brought nothing whatever in the way of property to the Pere Marquette.

When to these bad investments, discounts, and the like, there is added the amount used to pay off floating debt, covering current accounts, it becomes apparent that the issues during the Zimmerman-Hollins régime of the refunding mortgage 4 per cent bonds saddled upon the Pere Marquette an annual fixed charge of at least $250,000 for nothing of substantial permanent value.

The income account for the year to June 30, 1905, included the operation to the Niagara frontier over the Michigan Central tracks, which began about July, 1904. The year's gross operating revenues reached $12,667,420.34, but the operating expenses increased faster than the revenues, and amounted to $9,640,676.13, a ratio of 76.11 per cent. The resulting net operating revenue was a decrease of $111,151.11 from that of the year ending December 31, 1902, when the operated mileage was much less.

Apparently it was necessary in this year to make up some of the work deferred by the preceding management. The expense for maintenance, already set forth in the discussion of the Prince management, *ante*, page 45, would of itself indicate this, as does the relation of the operating expense accounts. It also appears from the rail records that 85-pound rail was adopted and 63.15 miles laid; but general roadway and track work and tie renewals did not proceed at the rate demanded by proper maintenance, nor at the rate under the Crapo-Thayer management.

The difficulties did not end with increase in operating expenses. Rentals of tracks, yards, terminals, buildings, and other property aggregated $753,251.86, almost $550,000 over the rentals for 1902, thus reflecting the cost of reaching Chicago and the Niagara frontier. Bond interest charges amounted to $2,178,954.83, the increase over 1902 being almost exactly 50 per cent.

Dividends paid during this year aggregated $531,234.25 made up as follows:

Date paid.	Par value.	Class of stock.	Rate (per cent).	Amount paid.
Dec. 31, 1904	$10,509,800	Preferred	2	$210,196.00
June 30, 1905	10,512,200	do	2	210,244.00
Mar. 31, 1905	3,165,550	Common	1	31,655.50
June 30, 1905	3,165,550	do	2½	79,138.75
Total				531,234.25

The dividends paid in 1905 came within the scope of the lease of the Pere Marquette to the C., H. & D., effective on March 1, 1905, whereby the latter road guaranteed the payment annually of 5 per cent on the common and 4 per cent on the preferred stock of the Pere Marquette. In consequence the aggregate of the 1905 dividends, $321,038.25, was charged against the C., H. & D. and handled as "income from other sources," but even with this the net result that year was a loss of $22,430.48. Nevertheless the dividend disbursements aggregated $531,234.25.

This year to June 30, 1905, and in fact the period of the entire Zimmerman-Hollins management down to October 20, 1905, was a

time when the Pere Marquette was, so to speak, slipping back rapidly. It did not, to be sure, fail to *pay* its bond interest, but this fact, much stressed by the representative of J. P. Morgan & Company who appeared before us in this proceeding, must be considered in the light of the methods, already discussed, which were adopted to meet current obligations; also in the light of the deferring of maintenance required to bring about even the result shown by the income account, unsatisfactory as that result was.

VIII. MORGAN MANAGEMENT, FROM 1905.

It seems proper to treat these years as one period in the history of the Pere Marquette. During this period there were extensive changes in the stock ownership, particularly in the transfer of the C., H. & D. holdings of 110,000 shares of Pere Marquette common to J. P. Morgan & Company, and there were changes in the Pere Marquette directorate as a result of the purchase of control of the C., H. & D. first by the Erie and then by the Baltimore & Ohio, while the C., H. & D. still held that common. But from December 4, 1905, when George W. Perkins went on the Pere Marquette board, representing Morgan & Company, that firm seems at all times to have been the guiding hand in Pere Marquette affairs.

The first event of importance, following the acquisition of C., H. & D. control by the Erie on October 20, 1905, and the reorganization in its interest of the Pere Marquette board, was the receivership under Judson Harmon, commencing December 4, 1905. This was coincident with the receivership of the C., H. & D., and on behalf of Morgan & Company it is insisted that the step was necessary in order to separate the two corporations. However that may be, it is apparent that the Pere Marquette of itself was then well on the way toward a receivership. It continued under a receiver until December 14, 1907. Under a plan for reorganization without foreclosure, proposed in August, 1907, the consolidation of this company with the Pere Marquette Railroad of Indiana, its subsidiary, was effected, and an issue of $5,000,000 of debenture bonds was authorized to retire its floating indebtedness. These bonds were offered to and purchased by the stockholders of the Pere Marquette, and carried with them a stock bonus which has already been explained, *ante*, page 31. This bonus was made out of the treasury stock which had been returned to the Pere Marquette by the C., H. & D., through the Harmon-Crapo arbitration of the financial difficulties between the two roads, as subsequently told in the C., H. & D. section of this report. These bonus issues increased the actual or outstanding capital stock liability by $1,713,016. The new company's capital stock account increased $500,000 over that of the predecessor in

order to take up a like amount, being the entire issues, common and preferred, of the capital stock of the Pere Marquette of Indiana owned by the parent company.

Funded securities were issued during this period as follows:

Mortgage bonds	$17,745,000.00
Debenture bonds	5,000,000.00
Collateral trust notes	8,000,000.00
Trust notes	1,200,000.00
Equipment obligations	14,958,471.52
Receiver's certificates	6,543,360.00
Receiver's notes	1,150,000.00
Total	54,596,831.52

The consideration received by the Pere Marquette for the foregoing was:

Sold for cash	$30,544,825.48
Exchanged for equipment	7,483,586.25
Exchanged for securities of carrier's own issue	5,595,885.27
Given in settlement of Bradford suit regarding Chicago, Cincinnati & Louisville Railroad Co. stock purchase	400,000.00
Total consideration	44,024,297.00
Discount, etc	10,572,534.52
Total	54,596,831.52

So far as can be ascertained, the cash realized from the sale of securities was disbursed as follows:

Equipment obligations retired	$11,408,854.32
P. M. collateral trust notes retired	6,395,236.04
Grand Rapids, Kalkaska & Southeastern R. R. bonds retired	142,000.00
Receiver's certificates and notes retired	2,863,360.00
Cash payment for new equipment	991,896.49
Additions and betterments (gross)	6,923,587.01
Other corporate purposes	1,819,891.62
Total	30,544,825.48

During this period the investment in road and equipment account increased $15,524,287.67. The following is representative of the addition:

New equipment	$8,475,482.74
Additions and betterments	6,923,587.01
Charges to road and equipment not representative of property	5,413,512.83
Gross charges	20,812,582.58
Less equipment and property retirement and miscellaneous credits	5,288,294.91
Net charges	15,524,287.67

The $5,413,512.83 not representing property is made up of the following items:

Pere Marquette International Bridge Co., project abandoned	$1,015.95
Buffalo & Niagara Terminal R. R. Co., amount advanced	5,424.55
Adjustment of Pere Marquette Steamship Co. accounts	233,713.58
Payment to city of Chatham, Ontario, in settlement of claim against Pere Marquette for nonmaintenance of car shops at Chatham	17,600.00
Trustees services account Eastern Equipment Co	2,609.00
Excess amount charged over cost of construction of P. M. of Ind	440,068.10
Worthless assets and accrued deficit carried on books of Pere Marquette prior to reorganization	4,711,470.44
Miscellaneous adjustments of equipment, operating expenses, etc	1,611.12
	5,413,512.83

The item of $4,711,470.44 deserves further exposition. It was charged to property account by instructions of the president, William Cotter, as authorized by the board of directors at a meeting held on August 18, 1908. The following extract is taken from the minutes of that meeting:

The attention of the board was called to the following asset or debit accounts appearing on the books of the Pere Marquette Railroad Company, viz:

Toledo Railway & Terminal Co. stock	$1,645,000.00
Advances to Toledo Ry. & Terminal Co.	70,000.00
Advances to Chicago, Cincinnati & Louisville R. R. Co	423,009.34
C., C. & L. Bradford settlement	400,000.00
Sarnia, Petrolia & St. Thomas Ry. stock	9,884.52
Discount and expenses in connection with the issue of 4 per cent refunding bonds	128,047.00
Profit and loss debit, June 30, 1907	2,186,066.16
	4,862,007.02

and also the following credit or liability accounts appearing on the said books, viz:

Inventory, overages, prior to receivership	$117,335.56
Steel rail suspense account, prior to receivership	33,201.02
	150,536.58

The president requested authority to write off or cancel the above accounts on the books of the company, stating that the debit accounts did not, in fact, represent existing assets of any value, and explaining that the carrying of said items in the accounts would make our balance sheet misleading as to the true assets and operations of the new company. On motion, the president was authorized to have the necessary entries made on the books, charging the amount of the loss to property accounts.

This entry was made on the books of the reorganized Pere Marquette after the consolidation but as an incident thereof. The intent was to wipe out what the entry described as "worthless accounts," carried from the books of the old company.

It must be borne in mind that the sole aim of this consolidation was to reorganize the Pere Marquette, which had been in receivers' hands for about two years, without foreclosure. The only new property added to the Pere Marquette was a line of 20.7 miles in Indiana with no equipment except an officer's private car, and some Chicago terminals of small extent. The construction of that property had been very largely done by the Pere Marquette and its actual cost was a little over $700,000. In the reorganization the cost of road on the books of the reorganized company was inflated to the extent of over $5,000,000. The propriety of this transaction was defended by the representative in this proceeding of J. P. Morgan & Company, on the ground that it would have been an absurdity to start out the new company with a deficit. This defense, however, must be considered in the light of a subsequent transaction, next related.

In the Harmon-Crapo arbitration the Pere Marquette was awarded $1,364,000 as compensation for its claims. That debt was subsequently liquidated in 1909 in C., H. & D. general mortgage bonds. The same representative of Morgan & Company, who as attorney for the Pere Marquette had pressed its claims before the arbitrators, expressed the view that this award was probably dictated by the very losses which had produced these "worthless assets" loaded into the property investment account. Nevertheless when the Pere Marquette later wrote up those C., H. & D. bonds at 60 per cent of their par value, or $818,400, this latter amount was credited, not to the property investment account, but to profit and loss.

During this same period of 1906–1914 other investments decreased $2,919,664.64, mainly due to the adjustment of the terminal company and Chicago, Cincinnati & Louisville accounts charged into cost of road, as just shown. Floating equipment owned by the Pere Marquette which had previously been turned over to the Pere Marquette Steamship Company, a subsidiary, and carried as an investment, was transferred back and the accounts were adjusted by the inclusion thereof in cost of property. The $1,364,000 par value C., H. & D. general mortgage bonds received from the C., H. & D. in settlement of the award under the Harmon-Crapo arbitration were set up as an "other investment" at 60 per cent of their par value and the same amount was credited to profit and loss. Advances of $222,672.12 were made to the Toledo Terminal Railroad Company, the successor of the terminal company.

The income account for these years shows an aggregate loss of $12,962,905.48, the results condensed being as follows:

Operating revenues and other income	$139,589,905.91
Operating expenses including taxes	115,262,027.94
Gross income	24,327,877.97

Deductions from gross income:		
Hire of equipment	$2,550,037.39	
Rentals	6,519,457.52	
Bond and other interest	28,110,968.15	
Miscellaneous	110,320.39	
		$37,290,783.45
Net loss		*12,962,905.48*

In connection with this showing we find it necessary again to comment upon the position taken by Morgan & Company in this proceeding. It was urged upon us that at no time during the first receivership and up to the commencing of the second on April 5, 1912, did the Pere Marquette make default in its payment of fixed charges. Such is the fact, but it is also the fact that those interest payments were not wholly earned, but were met partly out of the proceeds of receivers' certificates, afterwards funded in the debenture bond issue, and out of a fictitious net revenue, secured only at the expense of proper maintenance of the property. The only year of possible exception was 1910. To a considerable extent the degree to which maintenance was deferred during this period of Morgan control is clearly evidenced by the comparison of operating expenses in Appendix 4; it is shown also by the statistics of rail and tie work, and car and locomotive condition, as set forth in our discussion of the physical condition of the property; it was obvious to the engineers of this Commission who inspected the property in the late fall of 1914; and it is freely admitted by the carrier's operating management.

Through this Morgan reorganization the Pere Marquette emerged from receivership in 1907 carrying a load of outstanding capital stock and funded debt heavier by $7,000,000 than that under which it was staggering when the receivership began two years before. It never succeeded in carrying itself thereafter. A proper reorganization would have included reduction and not increase of fixed charges. The plan of reorganization dated October 30, 1916, carries marked decrease in fixed charges.

Other losses carried through the profit and loss account in addition to the results of operation must be considered. In the aggregate the showing to June 30, 1914, was as follows:

Debits:	
Net loss from income	$12,962,905.48
Debt discount extinguished	10,500,486.02
Net loss on retired road and equipment	3,054,800.59
Miscellaneous debits	724,047.40
Total debits	27,242,239.49
Credits: Miscellaneous credits	5,187,199.76
Profit and loss balance (deficit)	22,055,039.73

The major portion of the "debt discount extinguished" is the amount of discount resulting from the sale of $16,000,000 of Pere Marquette improvement and refunding general mortgage 5 per cent bonds. These bonds had been pledged as collateral with the trustees of an $8,000,000 issue of Pere Marquette collateral trust 6 per cent notes, which brought in 95 per cent cash, or $7,600,000, furnished by J. P. Morgan & Company. This issue was made with the approval of the Michigan Railroad Commission. The interest on the notes being in default, the trustee sold the $16,000,000 of collateral bonds at auction for the sum of $6,395,236.04, the bonds being bid in by a committee representing the $8,000,000 of notes. The proceeds were applied pro rata on the face of the notes, leaving a balance of $1,604,763.96 still due. The carrier chose to charge to profit and loss all the resulting discount of $9,604,763.96 on the bonds instead of amortizing any part thereof. Thereafter interest accrued on the $16,000,000 of bonds as well as on the deficiency of $1,604,763.96 on the notes.

Morgan & Company's representative before us stated that he did not know the names of all the holders of the bonds, and when asked to tell the names of those he did know declined to do so, for the expressed reason that he felt that he should not advertise the ownership of worthless bonds. He admitted, however, that Morgan & Company were interested in the ownership of the bonds and in the balance remaining unpaid on the notes. The extent of that interest is not disclosed of record.[1]

In January, 1912, the Old Colony Trust Company,[1] of Boston, loaned the Pere Marquette $1,200,000 on its 6 per cent notes maturing July 28, 1912, and secured by $1,200,000 par value of Pere Marquette improvement and refunding general mortgage 5 per cent bonds and the $1,364,000 of C., H. & D. general mortgage bonds which had been accepted by the Pere Marquette in satisfaction of the Harmon-Crapo arbitration award. After default this collateral was sold on February 17, 1915, the proceeds being as follows:

$1,200,000 P. M. improvement and refunding bonds brought	$60,037.50
$1,364,000 C., H. & D. general mortgage bonds brought	477,550.00
Total	537,587.50

The result, with costs of sale, left $656,092.80 still outstanding, and created an additional liability of $1,200,000 at 5 per cent on the books of the Pere Marquette, besides reducing its investment account by $818,400, at which figure the C., H. & D. bonds had been carried.

We direct attention here to the C., H. & D. portion of this report where it is shown that the Baltimore & Ohio Railroad Company was

[1] The plan for reorganization of the Pere Marquette, recently announced, provides that collateral trust notes, and the Old Colony notes, deposited under the plan, must be accompanied by the collateral to the extent respectively received by the holders thereof.

then bound to retire these C., H. & D. bonds before or during July, 1916, by paying $850 cash for each $1,000 bond, or by issuing in exchange therefor a new C., H. & D. 4 per cent bond guaranteed by the Baltimore & Ohio; also that the Baltimore & Ohio did finally pay $700.86 cash for each $1,000 par value of those C., H. & D. bonds.[1]

The profit and loss charge of $3,054,800.59 represents that portion of the loss on the road and equipment abandoned, sold, or otherwise retired during this period which was charged to profit and loss. Included in the miscellaneous credits aggregating $5,187,199.76 is an item of $2,186,066.16 representing deficit from operation to June 30, 1907, written out of profit and loss and charged to cost of property, as already stated, subsequent to the 1907 reorganization. Of the balance, $1,978,912.44 was due to setting up the treasury stock of the company from its book value of $193,997.56 to the par value of $2,172,910.

The history of this latter item goes back to the date of the organization of the original Pere Marquette as of January 1, 1900. In that connection it has heretofore been shown that at that time the company set up as an outstanding liability and charged into its investment in road and equipment its entire issue of $28,000,000 of capital stock, although $3,322,250 remained in the hands of trustees for the company. The $2,172,910 written up to par value in 1912 was what remained of that treasury stock. It was written up to par value, as an asset, upon instructions of this Commission, but instead of simultaneously decreasing the investment in road and equipment accordingly, the obviously proper method of handling in view of the earlier transactions recited, the credit was placed in profit and loss. True, the officials who so dictated were not those who had recorded the transactions of 1900, but there is no excuse for their failure to ascertain the facts as they have been disclosed in this record, and to record the transaction by decreasing the amount of the investment in road and equipment.

The improper accounting for these two credits resulted in reducing the profit and loss deficit by over $4,000,000. A further item included in miscellaneous credits is $818,400, being the amount set up in investment account to cover the book value of C., H. & D. general mortgage bonds previously referred to, and credited to profit and loss.

IX. FINANCIAL RESULTS, 1900–1914.

The financial results of the exploitation and mismanagement to which this carrier has been subjected are disclosed to some extent in

[1] Apparently the payment by the Baltimore & Ohio ultimately inured to the benefit of the Pere Marquette, for in the recently announced plan for reorganization of the latter company only $144,000 is shown as balance due on the Old Colony notes, and only that amount is provided for in the exchanges of new company's securities for old.

the comparative statement of property and finances for these 15 years, Appendix 4. A better exposition is an aggregation of the income account and an analysis of the profit and loss transactions for the entire period. These follow:

Income account, Jan. 1, 1900, to June 30, 1914.

Operating income:		
Railway operating revenues	$193,975,425.07	
Railway operating expenses	148,473,850.05	
Net revenue from railway operations		$45,501,575.02
Railway tax accruals		8,033,118.72
Railway operating income		37,468,456.30
Revenues from miscellaneous operations	$3,112,138.24	
Expenses of miscellaneous operations	3,307,433.61	
Net loss from miscellaneous operations		*195,295.37*
Total operating income		37,273,160.93
Nonoperating income		2,414,260.04
Gross income		39,687,420.97
Deductions from gross income:		
Hire of equipment	$3,004,499.27	
Rentals	8,267,899.67	
Interest on funded and unfunded debt	37,157,046.61	
Miscellaneous income charges	108,992.56	
Total deductions from gross income		48,538,438.11
Net loss		*8,851,017.14*
Miscellaneous adjustments of income through profit and loss account (net debit)		573,648.58
Net loss from operations		*9,424,665.72*

Profit and loss account. Analysis of entries from Jan. 1, 1900, to June 30, 1914.

	Dr.	Cr.
1. Net loss from operation, Jan. 1, 1900, to June 30, 1914	$9,424,665.72	
2. Profit on road and equipment sold		$1,553.03
3. Deficit prior to 1908 charged to cost of road [1]		2,186,066.16
4. Book value of Cincinnati, Hamilton & Dayton Ry. Co. bonds [2]		818,400.00
5. Treasury stock set up to par value [3]		1,978,912.44
6. Surplus applied to sinking and other reserve funds	$552,277.03	
7. Dividend appropriation of surplus [4]	2,907,485.25	

[1] Deficit to Jan. 1, 1908, charged to cost of road by authority of board of directors.
[2] These bonds, par value $1,364,000, had previously been carried at a nominal value of $1. By action of board of directors book value was raised to $818,400.
[3] Treasury stock, par value $2,172,910, had been carried at a book value of $193,997.56 and was raised to par value.
[4] Detail of dividend payments will be found in Appendix 7.

8. Surplus appropriated for investment in physical property	$527,818.00	
9. Debt discount extinguished through surplus	10,525,486.02	
10. Surplus transferred to contingent fund	250,000.00	
11. Miscellaneous appropriation account flood damage	300,383.96	
12. Loss on retired road and equipment	3,056,353.62	
Balance (loss)		$22,559,537.97
	27,544,469.60	27,544,469.60

The details of the transactions resulting in the more important profit and loss items shown above have been set forth in the foregoing pages. We have there commented upon the impropriety of treating as "surplus" items 3, 4, and 5. The dividend appropriations are shown in detail in Appendix 7. Substantially all the extinction of debt discount through surplus accrued during the period of Morgan control, and is there explained. Items 10 and 11 are incidents of the manipulations of the operating expense accounts of the Prince régime. The loss on retired road and equipment seems to have been properly handled.

It must not be understood that these income and profit and loss figures tell the whole story. There must be borne in mind those other losses which, during these 15 years, have been disposed of by the handy device of charging them up as "cost of road and equipment." These, since the organization of 1900, aggregated $6,995,690.53. Furthermore, as to all the different losses, all doubts have been resolved in the carrier's favor.

In the two years ended June 30, 1916, the Pere Marquette's gross operating revenues increased very materially, mostly as the result of additional tonnage handled. Expenses did not increase relatively, and the net income result was more satisfactory than for many years, the deficit in 1915 being $1,419,264.53, and 1916 producing a surplus from operations amounting to $254,557.66. But in these same two years the accrued deficit grew to $31,161,555.92, mainly on account of debt discounts extinguished through surplus.

X. PHYSICAL CONDITION, 1900–1915.

To comply with that portion of the request of the House Committee on Interstate and Foreign Commerce which relates to the physical condition of the equipment and property of the Pere Marquette an examination was made by engineers of the Commission's division of valuation in the fall of 1914. Only the property and equipment in the United States was covered; the Canadian lines were not. The road inspection was made by means of a railroad motor car, and the inspecting party was at all times accom-

panied by a division engineer of the carrier. Detailed examination was also made of the structures, shops, and equipment, and recourse was had to the engineering records. The report of the valuation engineer in charge of this work was submitted to the Pere Marquette, and was later incorporated in the record in this proceeding. It considers separately each of the various elements of the road's property and equipment.

The general conclusions of the inspecting party were that the Pere Marquette at that time was in nearly, but not quite, the condition usually maintained in ordinary railroad practice for handling traffic of similar kinds and amounts in the manner necessary to provide fair service to the public. To state it another way, while the property and equipment was not *markedly* below what might be called usual operating condition, it was on the average somewhat below. It was also apparent to the engineers that much maintenance work had been done and important improvements and additions made in the two or three years preceding the time of the inspection. As a result, rail, the most important item of track maintenance, had been increased in weight, ties had been extensively renewed, and there was a general betterment in other particulars of the track structure. During the same period the motive power and other rolling stock, and the shop facilities also, had been similarly improved. New locomotives had been added and the old ones greatly bettered, passenger and freight cars had undergone heavy repairs, and shop facilities had increased. But, with all this, it was apparent to the engineers that other road and equipment maintenance and improvements were still necessary to bring the road up to proper condition.

It should perhaps be added that what has been said with specific reference to rails and ties applies with equal force to most of the other elements of roadway maintenance, and that while much was done in the few years preceding the late months of 1914, there then still remained room for improvement in general track maintenance, in ballast, in passing, side, and station tracks, in automatic and other block signals, in fencing, in bridges, and in depots and other structures, especially in the smaller communities. The work on the bridges, however, was less deferred than were the other elements of maintenance. Much of this additional work was in fact already "programmed" in 1914 and has since been performed.

In all, 1,782 miles were inspected by the Commission's engineers, and the track was classified as follows:

	Miles.
Above usual condition	190
Usual condition	1,261
Poor condition, but safe	253
Bad condition, and unsafe	78

The Pere Marquette officials incline to the view that the mileage in usual condition would run somewhat more than 1,251 miles, and they object to the classification of "bad" track as unsafe, although admitting the "bad" condition. It is only fair to add that the poor and bad track was found for the most part in the unimportant branch lines. Authority was then being sought to abandon at least a part of such mileage. The track above normal was almost all between Detroit and Grand Rapids. As to the entire mileage the conclusion was expressed that generally the rail was light for the traffic, there being a considerable proportion of 56-pound and less, which was too light for present day rolling stock. But here it should be stated that in the three years to January 1, 1915, the average age of rail in the track had been reduced by 7.5 years, and its average weight had been increased from 64.18 pounds to 69.87 pounds.

Of the locomotives 97 per cent were inspected, and 76 per cent were found in normal condition or better. Passenger cars examined comprised 89 per cent of the total, and although many were quite old, they were rated in fair condition for the traffic handled. Eight per cent of the freight cars were looked over, and the records on all freight cars examined, and the report on this class of equipment indicates a lack of modern steel construction. As the result of the extra work in recent years the wooden cars were being rapidly brought up to normal condition.

These general conclusions of the Commission's engineers were characterized by the present operating manager of the Pere Marquette as "a very fair statement."

It follows quite obviously that when the extraordinary repairs, renewals, and betterments were begun, say about 1911–12, the road, structures, and equipment must have been in a condition much below normal. This deduction is admitted by the carrier. The condition of the property was not so good in 1912 as it was in 1905. The deterioration was in fact very marked. Such a condition must inevitably have been the result of policies such as had been pursued by succeeding managements since 1902, as already detailed in this report. But additional evidence may profitably be referred to as indicating that inevitability.

To this end there is inserted below a summary of the rail-laying record of the company beginning with 1900, and ending October 31, 1914, and a statement showing the crosstie renewals for the years 1902–1914, both taken from the Pere Marquette's engineering records.

Miles of rail laid.

Year.	56-pound.	60-pound.	65-pound.	67-pound.	70-pound.	75-pound.	85-pound.	90-pound.	Total.
1900	2.72				10.60				13.32
1901					42.00	153.15			195.15
1902					28.50				28.50
1903						.60			.60
1904						3.40			3.40
1905		6.50			8.80		63.15		72.45
1906					1.00	12.90	23.50		37.40
1907					6.90		16.05		22.95
1908									None.
1909					3.35	5.55			8.90
1910	1.07				3.35	25.10			29.52
1911	4.50				6.35	111.90			122.65
1912						38.33	23.00	61.80	123.13
1913		40.80	2.23	15.10	25.40	107.45		178.80	369.78
1914						32.85	15.40	46.25	94.50

Crosstie renewals.

Year ending June 30—	Main tracks.				Sidetracks.			
	Miles.	Average number ties laid per mile.	Percentage of renewals.	Presumed life (years) based on ties renewed.	Miles.	Average number ties laid per mile.	Percentage of renewals.	Presumed life (years) based on ties renewed.
1902	1,809.04	286	8.9	11.2	598.30	218	7.8	12.8
1903	2,124.22	242	7.5	13.2	643.61	200	7.1	14.0
1904	2,128.87	260	8.12	12.3	674.61	205	7.3	13.6
1905	2,139.45	221	6.9	14.5	748.17	158	5.6	17.7
1906	2,151.15	178	5.5	17.9	745.96	128	4.5	21.9
1907	2,105.68	179	5.6	17.9	743.54	190	6.8	14.7
1908	2,103.94	298	9.3	10.7	742.55	169	6.03	16.5
1909	2,089.50	122	3.8	26.2	740.15	96	3.4	29.1
1910	2,081.85	222	6.9	14.2	785.29	183	6.5	15.3
1911	2,076.20	264	8.2	12.1	804.55	170	6.0	16.4
1912	2,074.90	256	8.0	12.5	849.66	352	12.5	8.0
1913	2,074.90	375	12.7	7.7	852.52	266	9.4	10.6
1914	2,066.50	251	7.8	12.7	865.74	219	7.8	12.7
Averages	2,079	242	7.5	13.2	753	198	7.0	14.1

NOTE.—This statement is compiled upon the following basis: Life of a tie accepted by engineers of carrier and Commission as 11 years, character of tie, soil, drainage, traffic, and all other necessary elements taken into consideration. Ties in main track average 3,040 per mile. Ties in sidetrack average 2,816 per mile. Therefore, proper yearly maintenance would require the following: Ties per mile in main track 276; in sidetrack, 255. Percentage to be renewed in main track, 9; in sidetrack, 9.

The record of switch tie renewals was furnished beginning with the year 1906. It shows that in the main track renewals have averaged sufficiently high for adequate maintenance, although it was necessary to take up some slack in 1909, 1912, and 1914. In the sidings, however, switch tie renewal has been inadequate and has been made up in part by using crossties interlaced, an undesirable practice.

The statements next following show the condition of the Pere Marquette's equipment at stated times during the past few years. These also were furnished by the carrier's representatives. The locomotive situation should be viewed in the light of the purchase in 1910 and 1911 of many new first-class engines, with a resultant improvement in the average condition during that period; also, in the light

of the fact that locomotives are customarily kept up better than cars. Their condition was considered by the management to be well up to par about April, 1915. The "bad order" car statements show the cars out of commission, and should be read with the understanding that such cars on the Pere Marquette should not normally exceed 1,000.

Comparative statement of bad order cars.

Date.	Box, all kinds.	Stock.	Coal.	Flat.	Way.	Total.
March, 1911	1,022	27	359	111	9	1,528
July, 1911	1,751	48	441	128	.....	2,368
November, 1911	517	13	212	70	.....	812
March, 1912	462	22	202	82	.....	768
July, 1912	795	29	398	98	.....	1,320
November, 1912	495	8	268	81	.....	852
March, 1913	780	21	307	29	.....	1,137
July, 1913	1,881	19	610	112	.....	2,622
November, 1913	2,413	22	719	85	14	3,253
March, 1914	2,478	14	631	78	.....	3,201
July, 1914	2,467	14	500	48	8	3,037
November, 1914	1,730	22	253	74	1	2,080
March, 1915	1,364	24	361	57	6	1,812

Comparative statement showing condition of locomotives.[1]

Date.	Good.	Fair.	Poor.	Ready for shop.	In shop.	Waiting for shop.	Condemned.	Leased.	Total.
	Shopping not required for—								
	Over 9 months.	4 to 9 months.	Up to 4 months.						
Oct., 1911	255	39	63	(1)	33	29	5	3	432
Apr., 1912	119	106	89	(1)	49	40	1	3	[2]417

Date.	Shopping not required for—				In shop.	Waiting for shop.	Too light or condemned.	Leased.	Total.
	Over 12 months.	6 to 12 months.	2 to 6 months.	Up to 2 months.					
Jan., 1914	78	90	122	37	33	20	23	.....	413
Apr., 1914	109	100	76	30	33	21	36	.....	410
July, 1914	152	87	64	16	37	19	4	.....	379
Oct., 1914	161	99	63	13	33	9	3	.....	376
Jan., 1915	170	87	44	19	39	9	5	.....	373
Apr., 1915	180	89	31	23	31	4	11	.....	368

[1] Classification of condition changed on Jan. 1, 1914, as indicated by statement. In 1913, strike in shops made conditions abnormal; figures not reported.
[2] Ten locomotives unaccounted for.

It may be added as to the locomotives that the federal inspections during 1912 and 1913 showed about the same percentage of locomotives found defective, but many more were ordered from service in the latter year than in the former. In explanation of this the management points to strike conditions in the shops in the year 1913.

Another indication of the condition of the car equipment is found in a comparison annually of the hire of equipment balance. This follows:

Exchange of equipment balances.

Year.	Earned.	Lost.	Year.	Earned.	Lost.
1900		$107,194.68	1908	$213,445.33	
1901		107,146.97	1909		$10,464.73
1902		112,343.42	1910		143,213.40
1903	$22,624.56		1911		570,252.60
1904		28,197.48	1912		614,819.27
1905		83,642.64	1913		499,734.54
1906	57,641.68		1914		771,572.86
1907	209,651.24				

In explanation attention is called to the large purchases of freight cars at about the time the balances were most favorable to the Pere Marquette, a further indication, as we think, that such equipment was good while it lasted, without adequate repairs, but was not kept up to the condition necessary to retain it in interchange traffic.

The foregoing statements leave no doubt that after 1901 there was practically no adequate rail work until the years 1911, 1912, 1913, and 1914, although the 1905 record was somewhat better than usual. They further clearly show that the tie performance was inadequate from the very advent of the Prince administration, January 1, 1903, through 1907; and that, after a slight improvement in 1908, tie maintenance was regularly and greatly deferred until the years 1912, 1913, and 1914. The statements emphasize the deductions already made that one of the road's chief sources of suffering has been long deferred maintenance of road, structures, and equipment, particularly cars.

A glance at the income and operating expense accounts for recent years, especially during the present receivership, will readily indicate the financial effect of deferring maintenance to the extent theretofore practiced on the Pere Marquette. The extraordinary renewals and repairs required and made largely under the protection of the court in the years 1912, 1913, and 1914, together with adequate depreciation charges made on order of the court, were responsible for the tremendous increases in operating expenses in those years, resulting in 1914 in an operating ratio greater than 100 per cent.

There was much complaint of poor service throughout the territory served by the road during the early months of the receivership. That complaint must necessarily, we think, have greatly diminished as the result of the work done in the past few years. As early as November 1, 1914, more than half the locomotives were counted by the management in first-class condition and three-fourths were rated in either first or second class condition. With

the power so improved and with the great improvement in the rolling stock generally and in the condition of the roadway and track, the Pere Marquette found itself able to increase its freight train load from 360 tons in the last six months of 1910 and 376 tons in the last six months of 1911 to 503 tons in the same months of 1914, and the latter period we may note was not one of unusual prosperity with carriers. Furthermore, the passenger train record in 1914 averaged almost 90 per cent on time, and in winter weather through April, 1915, had reached almost 95 per cent, whereas in 1912 the percentage of passenger trains on time was not infrequently running less than 60 per cent. In the same years there was marked improvement in the safety of operation. In 1912 the road accidents numbered 416, the yard accidents 109, and the aggregate financial loss therefrom was $122,083.04; in 1914 the road accidents were 146 and the yard accidents 29, while the money loss aggregated but $38,117.22.

The present operating management admits practically all of the deductions as to past performance drawn by the Commission in this report, but it points to the great improvement made possible under the present receivership, although conceding that considerable work still remains to be done. It would seem that the future of the road now rests, first, in the effectiveness of its reorganization, second, in the character of its subsequent financial management, and, third, in its ability to secure traffic. A real receivership seems to have put the road in a condition where it can economically handle its traffic.

CINCINNATI, HAMILTON & DAYTON.

We shall now consider the Cincinnati, Hamilton & Dayton, following the subjects as listed on pages 9 and 10.

I. CINCINNATI, HAMILTON & DAYTON RAILROAD, 1846–1895.

This road was chartered as "Cincinnati and Hamilton Railroad Company" under Ohio laws on March 2, 1846, but the name was changed to "The Cincinnati, Hamilton and Dayton Railroad Company" on February 8, 1847. The company's line, completed and opened for traffic in September, 1851, extended from Cincinnati through Hamilton to Dayton, Ohio, a distance of about 60 miles. No change occurred in the corporate identity of the road or in the mileage owned by it until the consolidation of 1895, later described.

On March 5, 1851, the "Dayton and Michigan Railroad Company" was incorporated in Ohio to build a line from Dayton to Toledo, about 141 miles. This was completed in 1859. No change has occurred since in the corporate identity of that company, or in the mileage owned by it. The C., H. & D. as a corporation and through its own stockholders early acquired an interest in the new company and on May 1, 1863, leased its entire line in perpetuity. By this lease the C., H. & D. was given as a bonus $1,000,000 in par of Dayton & Michigan stock, and this, together with that already held and subsequently acquired, gave the C., H. & D. a majority control. Curiously enough this bonus stock was never entered on the C., H. & D. books and the entire proceeds from its sale in 1887 were credited to profit and loss. This lease, as modified June 23, 1870, is still in effect. Under it the C., H. & D. was required to pay operating expenses, taxes, interest. organization expenses, etc.; pay for improvements to the road and equipment; pay dividends of 8 per cent per annum on preferred stock; provide for the redemption, extension, or conversion into preferred stock of all maturing bonds; and pay a 3½ per cent dividend annually on "unpreferred" stock.

Although the modification of the lease entitled the C., H. & D. to the net earnings, the operations over the Dayton-Toledo line were not included in the income accounts on the latter's books until after September 30, 1872. No further change occurred for several years in the mileage directly operated by the parent road and covered in its own income accounts. Beginning in 1881, however, a number of additions to the system were made through stock control and lease, indicated by the following statement, which brought the total mileage directly operated on June 30, 1895, to 447.18 miles:

Year.	Subsidiary lines controlled through stock ownership.	Miles.
1881	McComb, Deshler & Toledo R. R., from Deshler to McComb	8.90
1887	Bowling Green R. R., from Tontogany to Bowling Green	5.55
1887	Piqua & Troy Branch R. R., from Troy to Piqua	8.64
1888	Columbus, Findlay & Northern R. R.,[1] from McComb to Findlay	8.80
1889	Cincinnati & Dayton Ry., from Hamilton to Middletown	12.38
1890	Bowling Green R. R.,[2] from Bowling Green to North Baltimore	15.00
1891	Cincinnati, Dayton & Ironton R. R.,[3] from Dayton to Ironton	184.05

[1] Reorganization of the McComb, Deshler & Toledo R. R. Extension to Findlay built, making total owned mileage 17.64.
[2] Line to North Baltimore purchased from Toledo, Findlay & Springfield Ry., making total owned mileage 20.55. Operations over the Bowling Green-North Baltimore line commenced by C., H. & D. on December 1, 1890.
[3] Also leased under agreement dated May 1, 1891, on which date C., H. & D. began operations. Mileage includes 20 miles of trackage rights over other lines.

The addition in 1891 of the Cincinnati, Dayton & Ironton Railroad was one result of the settlement of the financial difficulties into which the C, H. & D. was thrown through its exploitation by Henry S. Ives. Further facts as to that exploitation are presented in Appendix 8. In the settlement of those complications the C., H. & D. acquired a majority of the stock of the Dayton, Fort Wayne & Chicago Railway. That road extended from Delphos, Ohio, through Dayton to Deans, Ohio, and thence had trackage rights into Ironton, Ohio. Its corporate history may be traced back into the Toledo, Cincinnati & St. Louis Railroad system in the abridged corporate history chart, Appendix 3. Information as to the financial history of this Delphos-Ironton line is fragmentary, but the facts available indicate that it was never financially strong. The Dayton, Fort Wayne & Chicago was thrown into receivership on March 19, 1888, and when sold at foreclosure in February, 1891, was taken over by two companies organized by the C., H. & D., the one, the Cincinnati, Dayton & Ironton Railroad, acquiring the line from Dayton to Ironton, 184.05 miles, and the other, the Cincinnati, Dayton & Chicago Railroad, acquiring the then narrow-gauge line from Dayton to Delphos, 95.70 miles. The C., H. & D. owned the entire capital stock of both companies, although not carried as stocks on its books, and conducted their operations. No separate books of account were kept for them. In the case of the Cincinnati, Dayton & Ironton the operating results were embraced in the income accounts of the C., H. & D., but the operating results of the Cincinnati, Dayton & Chicago were cleared to an open account. An issue of $3,500,000 of first mortgage bonds was made in the name of and on the property of the Cincinnati, Dayton & Ironton, and these too were written on the books of the C., H. & D. as later explained. These two companies were consolidated with the C., H. & D. in 1895 to form the present company.

The operations of the C., H. & D. proper up to June 30, 1895, must be presented in two statements, owing to the absence from its files of

certain primary record, covering its earlier years. We give first a statement for the three and one-half years from October 1, 1851, to March 31, 1855, prepared from the company's reports to stockholders, of the operations over the 60 miles from Cincinnati to Dayton:

Income account, October 1, 1851–March 31, 1855.

Gross earnings	$1,365,649.61	
Operating expenses	571,692.68	
Net revenue from railway operations		$793,956.93
Taxes		36,350.34
Railway operating income		757,606.59
Rents	34,632.03	
Profit and loss account	48,395.61	
Total nonoperating income		83,027.64
Gross income		840,634.23
Interest account and interest on bonds	186,540.67	
Loss on running steamboat	16,308.71	
Total deductions from gross income		202,849.38
Net income		637,784.85
Dividends declared		[1] 438,816.37
Transferred to reserve fund		[2] 197,968.48

The next statement is based on the company's accounting records and represents only the operations over the mileage of the C., H. & D. proper from April 1, 1855, up to October 1, 1872; over the mileage of the C., H. & D. and Dayton & Michigan from Cincinnati to Toledo from the latter date up to 1881; and thereafter also over the new mileage acquired from time to time as indicated in the statement at page 71, *ante*.

Income account, April 1, 1855–June 30, 1895.

Gross earnings	$73,520,541.28	
Operating expenses	44,408,486.07	
Net revenue from railway operations		$29,112,055.21
Taxes and insurance		2,746,615.69
Railway operating income		26,365,439.52
Rents	2,320,630.67	
Mileage, net	378,879.99	
Interest and exchange, net	163,315.57	
Miscellaneous items	1,470,729.28	
Total nonoperating income		4,333,555.51
Gross income		30,698,995.03

[1] The carrier's books of account record dividends of $440,730.66 for this period. Explanation of difference not available.

[2] A difference of $1,000 in published figures not accounted for.

Rent for lease of road	$7,799,775.70	
Interest on funded debt	6,861,127.08	
Miscellaneous items	788,432.63	
Total deductions from gross income		$15,449,335.41
Net income		15,249,659.62
Sinking funds		66,180.00
Dividends declared		7,323,141.81
Income balance, transferred to credit of profit and loss		7,860,337.81

The $1,479,729.26 of miscellaneous items in nonoperating income includes $594,000 which the carrier credited in the year ended March 31, 1865, on account of unpaid coupons on Dayton & Michigan bonds received by the C., H. & D. under the terms of its lease of the former. This credit more properly belongs in the profit and loss account.

The foregoing statements show that the C., H. & D. was a profit maker from the very beginning. Including $105,000 charged to profit and loss, dividends amounting to $7,868,872.47 were disbursed, as shown in Appendix 9, and an approximately equal amount was transferred from income to the credit of profit and loss. The latter account also received credits up to June 30, 1895, as follows:

$454,000, interest allowed on advances to the Cincinnati, Hamilton & Indianapolis Railroad from 1880 to 1896, as later explained;

512,000, representing $249,000 of profit from the sale of Cincinnati, Richmond & Chicago Railroad stock and $263,000, representing principally net accumulations of surplus from the operation of that line by the C., H. & D. from 1866 to 1889;

760,000, receipts from the sale of the 20,000 shares of bonus Dayton & Michigan Railroad stock, acquired as previously explained.

The principal charges to profit and loss up to the consolidation of 1895 were:

$150,000 of interest on C., H. & D. general mortgage bonds, later referred to;
307,000 of discounts and commissions on securities issued;
2,235,000 loss of deposits with Henry S. Ives & Company, later explained;
195,000 of dividends;
198,000 of interest and exchange;
308,000 depreciation in stocks owned.

Allowing for sundry minor items, the credit balance in profit and loss on June 30, 1895, was $6,189,486.46.

The amount of this surplus, by far the greater part of which was accumulated prior to 1891 from the operation of 265 miles of line and less, raises the question as to why the stockholders did not receive even more generous cash distribution of profits. A further study of the company's accounts answers that question.

The C., H. & D. for years had been carrying among its stated assets an accumulation of its advances to the Cincinnati, Hamilton

& Indianapolis Railroad, a proprietary line extending from Hamilton to Indianapolis, Ind., 98 miles. At Indianapolis an important connection for Chicago business was maintained with the Chicago, Indianapolis & Louisville Railway Company. The C., H. & D. had acquired absolute control of the Cincinnati, Hamilton & Indianapolis at the latter's organization in 1872, had guaranteed the principal and interest of $2,500,000 of its first mortgage bonds, and had operated its line as a part of the system since that time. The results of such operations, however, were not carried into the income accounts of the C., H. & D. but were cleared on the latter's books to an open account between the two companies. This included also advances for construction and other charges. Up to June 30, 1895, the deficits on the Cincinnati, Hamilton & Indianapolis amounted to $2,466,822.74. This included interest on advances, delayed items carried into profit and loss, and $138,500 of interest accrued to June 30, 1895, on certain bonds of the Cincinnati, Hamilton & Indianapolis which the C., H. & D. through its control of the subsidiary road had caused to be voted to itself in part repayment of certain of said advances and interest thereon.

This latter transaction constituted a most flagrant abuse of corporate powers in funding operating deficits and interest charges. Between June, 1893, and August, 1898, $2,000,000 of general mortgage bonds of the Cincinnati, Hamilton & Indianapolis were voted by its board of directors to the C., H. & D. in part repayment of the former's debts to the latter, stated to aggregate $2,026,841.40. Analyses of the accounts show that of this sum only $219,524.19 had been advanced by the C., H. & D. for construction and like purposes. The balance, excepting $1,847.99 unaccounted for, consisted of $1,063,710.20 of deficits in income accumulated between January 1, 1880, and June 30, 1897; $474,759.02, of interest on said advances for construction and deficits; and $267,000, representing the interest which accrued during the four years, 1893 to 1897, on $1,335,000 of these same Cincinnati, Hamilton & Indianapolis general mortgage bonds, being the block first issued in 1893. The C., H. & D. being in complete control of the subsidiary company, was responsible for this capitalization of deficits and interest as described.

It has been previously stated that the C., H. & D. conducted the operations of the Cincinnati, Dayton & Chicago Railroad, the Dayton-Delphos line, and owned its entire capital stock. The results of those operations were not included in the income accounts of the C., H. & D. but were cleared on the latter's books to an open account between the two companies. For the four years 1891 to 1895 the operations resulted in losses of $141,856.84.

Another loss carried on the books of the C., H. & D. as an asset was an accumulation of $383,515.64 of advances made up to July, 1888, as its portion of unearned interest on bonds of the Cincinnati, Richmond & Fort Wayne Railroad, due under an agreement dated June 1, 1871. While this asset was probably retained on the company's books in anticipation of possible repayment, no such repayment was made up to 1895, and in June, 1911, the account was charged off to profit and loss.

But much the most serious losses suffered by the C., H. & D. up to the 1895 consolidation were those resulting from the exploitation of the property by Henry S. Ives in 1886 and 1887. Unfortunately the company's accounts and records do not yield all the facts necessary to construct a satisfactorily complete and connected story of Ives's manipulations, of the financial difficulties into which he plunged the C., H. & D., and of their ultimate adjustment. Such facts as could be assembled are set out in Appendix 8. It is now impossible to ascertain even approximately what the net losses were. That they were very substantial is evident. In part, to the amount of $2,235,000, they were charged off to profit and loss prior to 1895, as previously stated, but other items representing ultimate losses were still carried on the books at the time of the consolidation.

In addition to the foregoing there was another class of expenditure which necessarily restricted cash dividend payments. We refer to outlay on subsidiary lines, made, as a rule, for additions and improvements. For example, over $1,000,000 had been advanced to the Dayton & Michigan to June 30, 1895, practically all of which was not subject to repayment.

From the foregoing it is evident that there were abundant reasons why larger cash dividends had not been paid prior to 1895. The same facts warrant the conclusion that the surplus as then recorded on the books was largely fictitious.

On June 30, 1895, the following capital was outstanding in the hands of the public against the C., H. & D. and its two subsidiary lines, the Cincinnati, Dayton & Chicago Railroad and the Cincinnati, Dayton & Ironton Railroad, which three companies were then in process of consolidation:

Capital stock:	
Common C., H. & D.	$4,000,000
Four per cent guaranteed preferred C., H. & D:	
Series "A" and "B"	1,000,000
"Eagle" series	742,100
Mortgage bonds:	
C., H. & D. consolidated sinking fund bonds, due 1905—	
5 per cent	894,000
6 per cent	1,840,000
7 per cent	996,000

Mortgage bonds—Continued.	
C., H. & D. second mortgage 4½ per cent bonds, due 1937	$2,000,000
C., H. & D. general mortgage 5 per cent bonds, due 1942	3,000,000
C., D. & I. first mortgage 5 per cent bonds, due 1941	3,500,000
Miscellaneous obligations: Real estate mortgages	6,000
Nonnegotiable debt to affiliated companies: Call loans	130,000

Complete information is not available from the company's records as to the proceeds from these issues and the use made thereof. Of the common stock, $500,000 was used to retire an equal amount of an early issue of bonds and $1,054,100 was put out at various times as stock dividends. The $1,000,000 of series "A" and "B" preferred stock was sold at par for cash. Holders were denied voting rights. This stock originally bore guaranteed dividends of 6 per cent, but in 1886 the stockholders accepted a reduction in rate to 4 per cent in preference to redemption of their stock at par in cash. The so-called "Eagle" preferred stock bore 4 per cent guaranteed dividends and was also denied voting rights. It had been issued largely to redeem spurious stock put out by the Ives management, as stated in Appendix 8. No stocks for the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago are included in the statement, for the reason that no books were kept for them and their stocks were not carried on the books of the C., H. & D. as its liability. Indeed, the latter did not record specifically the ownership of said stocks, although the record shows that it did own the entire issue of both companies, $5,000,000 of the Cincinnati, Dayton & Ironton and $4,000,000 of the Cincinnati, Dayton & Chicago. The $3,500,000 of Cincinnati, Dayton & Ironton bonds were issued in 1891, and were guaranteed principal and interest by the C., H. & D., which, though not formally assuming said bonds, wrote them on its books as a liability and merged the proceeds with its own resources. The $3,000,000 of C., H. & D general mortgage bonds are included in the foregoing statement because they were issued under a mortgage dated June 1, 1892, and had all been sold prior to June 30, 1893, although neither the liability therefor nor the proceeds therefrom were recorded in the company's accounts until June, 1896. Apparently the proceeds were held in New York by certain trustees, so called, but the company's records do not disclose the identity of those trustees nor the use they made of the funds during this four-year period. These circumstances direct attention to the disposition of an item of $184,392.75 which, when the accounting for this bond issue was made, was charged up as cost of road and equipment. This is covered more fully later on. The company's records do not show that any interest on these funds accrued to its credit during the time they were held by the trustees. Although not on the books until June, 1896, the prin-

cipal of these bonds was included in the statement of funded debt in the company's report to this Commission for the year ended June 30, 1893, and subsequently.

It was during the closing days of the corporate existence of the Cincinnati, Hamilton & Dayton Railroad Company, i. e., in May and June, 1895, that authority was voted for the acquisition of a half interest, joint and equal with the Southern Railway Company, in what finally became the Southwestern Construction Company, controlling the Cincinnati, New Orleans & Texas Pacific and Alabama Great Southern, which, with dependent companies, constitute the through line from Cincinnati to New Orleans known as the "Queen and Crescent route." As a part of the arrangements an agreement was entered into by the roads interested providing for the preferential interchange of traffic between them. This holding of the C., H. & D. has always been looked upon as one of its substantial assets.

There follows a general balance sheet as of June 30, 1895, for the C., H. & D. proper. The 1896 figures are also shown comparatively for convenience in following the discussion of the changes occasioned by the consolidation which is next taken up.

Cincinnati, Hamilton & Dayton.

GENERAL BALANCE SHEET AS OF JUNE 30, 1895 AND 1896.

Assets.	1895	1896
Investment in road and equipment	$10,228,107.26	$21,570,251.30
Miscellaneous physical property	10,000.00	.....
Investments in affiliated companies:		
(a) Stocks	445,171.49	897,100.32
(b) Bonds	2,330,150.00	2,335,000.00
(d) Advances	3,491,421.79	1,253,884.61
Other investments:		
(a) Stocks	1,111,550.00	533,482.29
(b) Bonds	4,000.00	4,000.00
(d) Advances	4,001.12	.....
(e) Miscellaneous	500.00	500.00
Total investments	17,620,501.66	26,594,218.52
Cash	99,350.58	2,463,176.85
Special deposits	270,[illegible]28	420,670.19
Loans and bills receivable	114,489.77	8,580.77
Net balance receivable from agents and conductors	176,218.85	191,[illegible]24
Miscellaneous accounts receivable	126,225.41	129,748.13
Material and supplies	182,209.15	154,582.98
Other current assets	144.60	446.12
Total current assets	968,725.59	3,370,990.28
Working fund advances	11,144.71	16,975.89
Other deferred assets	402,000.94	308,515.64
Total deferred assets	413,280.65	325,[illegible]90
Other unadjusted debits	3,202,946.18	345,[illegible]39
Total unadjusted debits	3,202,946.18	345,[illegible]29
Total	22,216,379.08	30,677,[illegible]58

Cincinnati, Hamilton & Dayton—Continued.

GENERAL BALANCE SHEET AS OF JUNE 30, 1895 AND 1896—Continued.

Liabilities.	1895	1896
Capital stock:		
Book liability at date [1]	($5,742,100.00)	($16,000,000.00)
Held by or for carrier at date		
Actually outstanding at date	5,742,100.00	16,000,000.00
Total stock	5,742,100.00	16,000,000.00
Funded debt unmatured:		
Book liability at date [1]	(4,736,000.00)	(11,228,000.00)
Held by or for carrier at date		
Actually outstanding at date	4,736,000.00	11,228,000.00
Nonnegotiable debt to affiliated companies:		
(a) Notes	130,000.00	142,000.00
Total long term debt	4,866,000.00	11,370,000.00
Loans and bills payable	609,602.30	753,500.00
Audited accounts and wages payable	562,901.41	610,376.95
Miscellaneous accounts payable	44,670.60	44,976.71
Interest matured unpaid	159,961.09	310,716.09
Dividends matured unpaid	51,253.75	1,565.92
Unmatured dividends declared	12,473.66	11,740.00
Unmatured interest accrued	116,621.67	129,059.17
Unmatured rents accrued	112,397.00	112,397.00
Other current liabilities	68,873.61	68,230.84
Total current liabilities	1,739,755.09	2,043,562.68
Other deferred liabilities	[2] 3,500,000.00	.....
Total deferred liabilities	3,500,000.00	.....
Other unadjusted credits	129,829.03	16,970.07
Total unadjusted credits	129,829.03	16,970.07
Sinking fund reserves	43,208.50	65,067.75
Profit and loss—balance	6,189,486.46	1,181,975.04
Total corporate surplus	6,232,694.96	1,247,042.79
Total	22,210,379.08	30,677,575.54

[1] Memorandum only; not included in total.
[2] Represents Cincinnati, Dayton & Ironton R. R. Co. first mortgage bonds.

II. CINCINNATI, HAMILTON & DAYTON RAILWAY, 1895–1904.

It has already been stated that the present corporation, the Cincinnati, Hamilton & Dayton Railway Company, was formed by the consolidation of the Cincinnati, Hamilton & Dayton Railroad Company, The Cincinnati, Dayton & Ironton Railroad Company, and The Cincinnati, Dayton & Chicago Railroad Company. The system was then in the control of what was known as the Shoemaker-Woodford management. This consolidation was effected under the terms of an agreement dated June 6, 1895. The organization of the new company was completed on July 30 by the adoption of regulations and the election of directors.

Under the terms of the consolidation agreement the new company was to issue $8,000,000 of common and $8,000,000 of preferred stock in shares of $100 par value. The new preferred was to carry equal voting rights with the common and the right to noncumulative dividends up to 5 per cent per annum before any could be paid on

common. After payment of 5 per cent on both classes of stock in any year they were to share equally in any further division of net earnings for that year. The agreement provided that shares of the new company should be exchanged for those of the predecessor companies on the following bases:

(*a*) Two shares of common and 1.55 shares of preferred of the new company for each share of common of the C., H. & D. R. R.;

(*b*) One share of preferred of the new company for each share of preferred of the C., H. & D. R. R. tendered for exchange. Any preferred shares of the latter not exchanged were to become the first preferred of the new company, subject to the same terms and conditions as attached to their issuance by the C., H. & D. R. R.;

(*c*) One share of preferred of the new company for four shares of common of the Cincinnati, Dayton & Ironton or of the Cincinnati, Dayton & Chicago not owned or held by the C., H. & D. R. R. Such shares held by the latter were to be canceled.

As all shares of the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago were then held by the C., H. & D., no shares of the new company were issued to retire them. The actual exchanges were not all made when the consolidation became effective, but extended over a considerable period. Of the $5,742,100 in shares of the original C., H. & D. outstanding on June 30, 1895, $4,667,600 was exchanged for $14,867,600 in shares of the new company, an inflation of $10,200,000, as shown by the following:

C., H. & D. R. R. Co. stock.		C., H. & D. Ry. Co. stock.	
Par value.	Class.	Par value.	Class.
$4,000,000	Common, exchanged for	$8,000,000	Common.
		6,200,000	Preferred.
279,700	Preferred—"Eagle" series—exchanged for	279,700	Do.
387,900	Preferred—"A" and "B" series—exchanged for	387,900	Do.
4,667,600		14,867,600	

Moreover, by the adjustment entries next to be described $57,900 of the new preferred was entered on the books as issued, which in fact was not issued until later. Of this, $42,500 was exchanged on June 24, 1899, for an equal amount of "Eagle" preferred of the original C., H. & D. R. R. This latter stock, curiously enough, had never been written on the books and was not issued until February 22, 1896, several months after the consolidation. These "Eagle" shares were put out to retire 450 shares of spurious stock issued during the Ives régime. On November 29, 1898, certificates for the remaining $15,400 of new preferred were issued to the secretary-treasurer of the new company, as trustee. In the following month $7,400 thereof, with $69.73 in cash, went in purchase of $17,174.32 of preferred stock of the Cincinnati, Hamilton & Indianapolis, the

subsidiary previously mentioned, and $8,000 was held by the secretary-treasurer, as trustee, until February, 1905, when it was sold under circumstances of peculiar interest, as related at page 128 of this report.

No property was added to the C., H. & D. by this consolidation of 1895. The original C., H. & D. had acquired its interest in the Dayton, Fort Wayne & Chicago, the predecessor of the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago, in the settlement of its financial difficulties incident to the Ives maladministration. It owned the entire capital stocks of those two successor companies. The original investment of the C., H. & D. in the Delphos-Ironton lines, therefore, had already been made and recorded on its books, together with its subsequent expenditures for improving those lines. The consolidation merely effected a change in the title to the several lines, the new corporation acquiring the 318 miles listed below, all in Ohio:

	Miles.
Cincinnati to Dayton	60
Delphos to West Junction	190
Byers Junction to Dean	47
Ironton Junction to Wellston	3
Wellston to Buckeye furnace	8
Various branches	10

The new C., H. & D. also continued the control and operation of the following subsidiary lines:

	Miles.
Columbus, Findlay & Northern R. R., Deshler to Findlay	17.64
Bowling Green R. R., Tontogany to North Baltimore	20.55
Piqua & Troy Branch R. R., Troy to Piqua	8.64
Cincinnati & Dayton Ry., Hamilton to Middletown	18.38
Dayton & Michigan R. R., Dayton to Toledo	140.72

With 22.46 miles of trackage rights the total mileage directly operated by the new company on June 30, 1896, aggregated 541.38 miles, single track. It also continued to operate the line between Hamilton and Indianapolis owned by its subsidiary, the Cincinnati, Hamilton & Indianapolis Railroad, but, as to it, the operating accounts continued to be cleared to an open account between the two companies and were not merged into the income of the parent road.

The new C., H. & D. did not open new books of account but continued those of the original C., H. & D. Indeed, no adjustment of accounts in consequence of the consolidation was made until June of the following year, 1896. Then all such adjustments, except minor ones occasioned by subsequent exchanges of stock, were made in two journal entries. These included many items entirely unrelated to the consolidation and served to close out a number of matters without undue stress upon their significance.

One of the two entries is entirely barren of information from which to definitely determine its disposition of forty-odd different accounts involved. The entry is merely a list of the debits and credits to those accounts, introduced by the nonilluminating statement—

For amount of the following accounts transferred by order of M. D. Woodford, Pres.

Nor is the lacking information available from other records of the company. But it seems clear that the simple plan was adopted of computing the balance between the aggregate of credit items and the aggregate of debit items, and then charging that balance to the old "construction" account.

The second journal entry cleared this account and several others into a new account named "cost of road and equipment," which was thus opened with an aggregate charge of $19,682,304.95. The following statement shows in general terms the nature of the items embraced in this total so far as can be ascertained from the data available. The sum represented nearly two-thirds of the total assets of the new company on June 30, 1896.

(A) $10,257,900.00, the difference between the capital stock accounts set up for the new company, $14,394,700, and the amounts written out of the capital stock accounts of the old company to date, $4,136,800. This difference represents $57,900 of new preferred treasury stock later disposed of, as explained at page 79, and $10,200,000 inflation in stock contemplated in and effected by the consolidation.

(B) 8,439,899.01, the balance on June 30, 1895, in the equipment account of the original C., H. & D., here closed out.

(C) 4,548,482.58, representing $4,540,812.49, the balance on June 30, 1895, in the construction account of the original C., H. & D., here closed out, plus $7,670.09, unexplained.

(D) 909,219.25, representing $688,600.52 transferred from the old "real estate" account plus $220,618.72, being balances on June 30, 1895, in other accounts apparently covering investments in real estate, here closed out.

(E) 3,768,268.98, composed of the following:

Betterment expenditures on the Cincinnati, Dayton & Chicago	$146,691.96
Construction and equipment expenditures on the Cincinnati, Dayton & Ironton	1,073,422.38
Liquidation of receiver's certificates and of various claims, etc., against the Dayton, Fort Wayne & Chicago	869,313.06
Sundry disbursements in settlement of various Ives matters and of claims, etc., against Dayton, Fort Wayne & Chicago	1,673,841.56

(F)	$1,808,128.89,	net of sundry items covered by the two adjustment entries, which, under ordinary accounting practice, would have been cleared to the surplus account.	
		The principal debits are:	
		Cash disbursements and "Eagle" preferred stock used to redeem bogus stock put out during Ives régime	$702,413
		Discount on C., D. & I. bonds	278,690
		Interest, commissions, and expenses in sale of C., D. & I. bonds	88,434
		Cash disbursements made in Ives régime in purchase of T. H. & I. stock, now written off	889,500
		Deficits from C., D. & C., 1892–1895	142,507
		Discount on C., H. & D. general mortgage bonds	115,000
		Sundry old asset accounts written off	158,889
		The principal credits are:	
		Arbitrary increases in book value of various securities to par	117,527
		Writing off "suspended income account"	127,645
		Opening of account to record ownership of common stock of Cincinnati, Hamilton & Indianapolis	221,776
		Opening of new account, "C., F. & N. common stock"	85,700
(G)	184,992.75,	unexplained item connected with handling of proceeds from C., H. & D. general mortgage bonds by certain trustees.	
	24,911,891.41		
Less	5,229,586.46,	net amount written out of surplus account accumulated to June 30, 1895, by original C., H. & D.	
	19,682,304.95		

Many of the items in the foregoing schedule are self-explanatory, but some have a further special significance. Those included under E represent, as nearly as can be determined, the maximum amount invested by the original C., H. & D. in the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago. In the last item of that group, however, are included amounts which would be differently assigned if all the details respecting them were available. Expenditures in connection with the Ives manipulations covered not only the acquisition of the property named but also the retirement of bogus stock issued during his control, and the settlement of claims of a varied character growing out of all those complications, described in Appendix 8. In such settlements there were acquired other assets entirely unrelated to the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago. Many of the expenditures represented expenses or losses, properly chargeable only against

profit and loss. It has been possible to segregate some items of this latter class, and these are included in F, but only such items as clearly fall within the scope of the descriptive heading. Substantial amounts would be added to this latter group if the details of the various accounts were available in full.

The fourth item under F represents the closing out of an account to which had been charged cash disbursements apparently incident to the effort of the C., H. & D. during the Ives régime to acquire control of the Terre Haute & Indianapolis Railroad. This disposition of the account would indicate an outright loss of these expenditures, another of the very heavy losses suffered by the C., H. & D. by reason of the Ives control. Another item of special interest in the same group is the next to the last. This represents the offset to the opening of a new account recording the ownership by the C., H. & D. of the entire issue of common stock of one of its subsidiary companies, the Cincinnati, Hamilton & Indianapolis. This stock had been owned since 1872 but had never before been entered on the books. The management embraced this opportunity to write up the asset, requiring an offsetting credit as shown. The amount $221,776 is just 10 per cent of the par value of the stock issued. This stock was not written on the issuing company's books until June, 1897. Under G is shown an amount which, through these entries, was added to the carrier's cost of property without a word of explanation. It forms a part of the accounting for the $3,000,000 of C., H. & D. general mortgage bonds, the issuance of which in 1892–93 has already been mentioned.

On June 30, 1895, the "surplus earnings" account of the C., H. & D., which was its profit and loss account, carried a credit balance of $6,189,486.46. By these two adjustment entries of June, 1896, $5,229,586.46 of this was used to reduce the charges to the new "cost of road and equipment" account. Then $902,400 of the old surplus was formally transferred to the credit of the new company's profit and loss. This left $57,500 of the old surplus unaccounted for, and this amount also was evidently allowed to lap over, without formal transfer, into the profit and loss of the new company. The reason for thus starting off the new company with a surplus of $959,900 from one of its predecessor companies has not been disclosed.

On its own merits, but also because of the fictitious value placed on the common stock in the 1904 transactions, to be dealt with later, the inflation of capital by over $10,000,000 through this consolidation deserves special consideration. The adjustment entries do not even hint at additions and betterments made from income of previous years. As previously emphasized, no new property whatever was acquired in this consolidation. All of the investments by the C., H.

& D. in the lines consolidated had been made some time previously and were already recorded among its assets. Apparently there remain but two other possible grounds of extenuation, first, that the increase of capital was merely a method of distributing the accumulated profits of the company; and, second, that it was merely a capitalization of the actual value of the Cincinnati, Dayton & Ironton and Cincinnati, Dayton & Chicago over and above the amounts expended therefor.

We have already commented upon the largely fictitious character of the surplus, recorded as accumulated to June 30, 1895. To summarize the foregoing it may be said that the real surplus available for capitalization can only be reached by eliminating the following items:

$2,466,822.74 of deficits, which had accumulated to June 30, 1895, on the Cincinnati, Hamilton & Indianapolis, as shown at page 74. Since the C., H. & D. was practically the owner of this line the deficits were really its own deficits, despite the fact that the parent road had caused the subsidiary company to issue bonds to the former in part reimbursement for said deficits.

883,515.64 of advances, which had been made by the C., H. & D. to July, 1888, in part payment of unearned interest on bonds of the Cincinnati, Richmond & Fort Wayne. This sum was carried among C., H. & D. assets but was never realized on, being finally charged off to profit and loss. See comments on page 75.

1,808,128.89 of sundry profit and loss items which were thrown into property account by the adjustment entries of June, 1896, as shown on page 82.

959,900.00 of the accumulated surplus to June 30, 1895, which was carried over to the credit of the new company, see page 83.

These eliminations from the book surplus of $6,189,486.46 would leave only about a half million of dollars available for capitalization. This latter amount is certainly a maximum, in view of the fact that many other items would be included under F of the schedule on page 82 if complete details were available to definitely establish the proper classification. As to the possible excess in value of the Cincinnati, Dayton & Ironton and Cincinnati, Dayton & Chicago over the C., H. & D.'s investment therein, it must again be stated that the lack of necessary data prevents an estimate of their cost. From the standpoint of earning value, however, the indications are all to the effect that after allowing for a fair return on the investment, but little if any net revenue remained to support additional capitalization.

The record supports the conclusion that there was not even an excuse for inflating the capital of the C., H. & D. by $10,200,000 in 1895.

The new company assumed all the obligations of the three predecessors. A general balance sheet showing the 1895 and 1896 figures is given at pages 77–78, and from this the changes due to the consolidation may be read in a general way. It should be noted that the $3,500,000 of Cincinnati, Dayton & Ironton bonds were not classed as funded debt in 1895 for the reason that, while the C., H. & D. had guaranteed the bonds, it had not formally assumed them as its own liability. Also, in connection with the discussion above regarding the $19,682,304.95 charged to the new "cost of road and equipment" account, it should be said that this amount embraced items already on the books and which are classified in the 1895 figures as "investment in road and equipment." The latter account was really increased by only $11,347,144.04, and this figure includes regular construction charges during the year to June 30, 1896, subsequent to the consolidation.

The story of the new C., H. & D. after its formation in 1895 may be best told by considering next as a whole the period up to the summer of 1904 when the control which had been exercised by the Shoemaker-Woodford interests was surrendered to the syndicate, the operations of which and of its successors in power turned the prosperous property into a financial wreck.

The lines directly operated by the new company and covered in its own income accounts during this period consisted of the 541.38 miles as previously described and two later additions. The first of these was 2.46 miles, located in Dayton, serving the National Military Home. This was leased in perpetuity on June 29, 1897. The second addition was the 80.74 miles, including 0.55 mile of trackage rights of the Findlay, Fort Wayne & Western Railway, extending from Findlay, Ohio, west to Fort Wayne, Ind., and crossing the C., H. & D. at Ottawa, Ohio. The C., H. & D. assumed operation of this line on November 1, 1901, under a temporary agreement with the security holders, and earned net therefrom to June 30, 1903, $10,291.56, which was added to the income of the operator through a miscellaneous account, and not by merging the operating accounts with its own. Upon foreclosure of this road in July, 1903, it was taken over by a newly organized company, the Cincinnati, Findlay & Fort Wayne Railway, and all the latter's stock, $1,250,000, was made over to the C., H. & D. in consideration of a guaranty by the latter of the principal and interest of the new company's bonds, aggregating $1,150,000. This stock the C., H. & D. carried at a nominal value. It acquired a 99-year lease of this line, dated November 1, 1903, and the results of the operations for the entire fiscal year 1904 and thereafter were merged with those of the lessee. To comply with Indiana laws an agreement dated October 12, 1906, effective

July 1, 1906, and another dated August 20, 1909, were executed to grant the C., H. & D. trackage rights on the 17.51 miles of this line in that state. It continued thereafter, however, in exclusive tenancy of the Cincinnati, Findlay & Fort Wayne. With these additions the operated mileage of the C., H. & D. on June 30, 1904, was 624.58 miles, single track.

The results of operating the mileage described during the nine years ended June 30, 1904, were very good. The minimum operating ratio was 63.3 per cent, the maximum 71.3 per cent, in 1904, and the average for the period 65.3 per cent. These results were not obtained at the expense of the property, for the record shows that the road and equipment were well maintained throughout the period, although toward its close the time was approaching when generally increasing standards would require large expenditures for heavier equipment and correspondingly stronger track and bridges. The operating results year by year are shown in condensed form in Appendix 5, and the aggregate for the entire period is given below:

Gross earnings from operation	$43,753,651.76	
Operating expenses	28,579,304.65	
Income from operation		$15,174,347.11
Taxes		1,349,172.96
Net income from operation		13,825,174.15
Income from other sources		281,871.13
Total income		14,107,045.28
Deductions from income:		
Rents paid for lease of road	$2,896,632.97	
Miscellaneous rents	29,019.45	
Interest on funded debt accrued	5,418,065.18	
Other deductions	17,447.33	
Total deductions from income		8,360,564.93
Net income		5,746,480.35
Appropriations of income:		
Sinking funds	*6,050.95*	
Dividends on preferred stock	3,392,527.71	
Total appropriations of income		3,386,476.76
Balance transferred to credit of profit and loss		2,360,003.59

The dividends of $3,392,527.71 represent the regular accruals on preferred stock. In addition a 2 per cent dividend was declared on the common and charged to profit and loss in December, 1903. Of this more will be said later. This dividend record and the accumulation of $2,360,003.59 additional surplus indicate the prosperous condition of this period. The results for these years are not marred by any failure of the lines west of Hamilton to earn

their own way, for the record shows that the Cincinnati, Hamilton & Indianapolis, from July 1, 1895, to August 31, 1902, earned $29,002.94 net; the newly acquired Indiana, Decatur & Western, from January 1, 1896, to August 31, 1902, earned $281,935.26 net after making adjustment of the erroneous disposition in its accounts of equipment rentals and interest on equipment notes; and the Cincinnati, Indianapolis & Western, the successor of these two, from September 1, 1902, to June 30, 1904, earned $294,120.97 net.

A number of important changes affected the lines west of Hamilton during this period. A conditional ownership and control of the then newly organized Indiana, Decatur & Western Railway, owning the line from Indianapolis to Decatur, Ill., some 152 miles, was acquired in the fall of 1895 by parties representing the controlling interest in the C., H. & D. The C., H. & D. assumed active management of the new company on January 1, 1896, although it was not until June, 1897, that formal authority was voted for its acquisition of control through the purchase of the entire capital stock of the new company. Separate books of accounts were kept for the Indiana, Decatur & Western covering both capital and operations. Under an agreement dated February 4, 1899, the Indiana, Decatur & Western purchased outright the north and south line from Sidell, Ill., to West Liberty, Ill., 78 miles, and thence by 8 miles of trackage rights reached Olney, Ill. Payment therefor was made in $933,000 of its first mortgage bonds. An interesting feature of this transaction was that the holder of the bonds agreed by the same contract to sell those bonds to the Cincinnati, Hamilton & Indianapolis for $475,000 in cash. Evidently the C., H. & D. furnished the cash, for it received the bonds from the Cincinnati, Hamilton & Indianapolis and, strangely enough, allowed the latter credit in open account for $448,670, representing the par of the bonds less the cash payment and less 1 per cent discount in the subsequent sale of the bonds. That sale was made at 99 contingent upon the indorsement of the bonds by the C., H. & D. with its guaranty of principal and interest.

Another addition to the Indiana, Decatur & Western was an extension of its line to Springfield, Ill., by the acquisition of trackage rights, 8 miles, from Decatur to Boody, Ill., and the purchase of the 34 miles then under construction from the latter point to Springfield under the terms of an agreement dated October 12, 1901. The cost of the new mileage was $105,201.77 in cash, $405,000 in par of first mortgage bonds, $900,000 in par of preferred stock, and $1,088,000 in par of common stock of the Indiana, Decatur & Western. This was manifestly a gross overissue of capital. Apparently the idea was to get out as much stock as possible in anticipation of the consolidation of the Cincinnati, Hamilton &

Indianapolis and the Indiana, Decatur & Western, then contemplated, and which is later described. On July 14, 1902, the executive committee of the C., H. & D. appointed a committee to arrange for the purchase of this stock. This committee reported on January 14, 1903, that the $1,988,000 of stock had been bought for $195,613.72 and converted into $2,438,000 in par of the stock of the new Cincinnati, Indianapolis & Western. The Boody-Springfield line purchase was not completed prior to the consolidation of 1902, so that it was not covered in the income results of the operations of the Indiana, Decatur & Western. Quite evidently this entire Indiana, Decatur & Western extension deal was an affair of the insiders then in control of the C., H. & D. system.

The first mortgage bonds of the Cincinnati, Hamilton & Indianapolis matured January 1, 1903. The C., H. & D. was guarantor of the principal and interest on the $1,800,000 of this issue held by the public. This was one cause, if not the primary cause, of the consolidation of the Cincinnati, Hamilton & Indianapolis and the Indiana, Decatur & Western, which was accomplished under an agreement dated August 1, 1902, and formed the Cincinnati, Indianapolis & Western Railway, already mentioned. The accounting for the two predecessor companies was closed as of August 31, 1902, and that for the new company began September 1, 1902. The C., H. & D. became the owner of all the stock of the new company, 71,158 shares, and continued its operation of the entire line. The accounts were kept separately, those covering operation being so carried up to June 30, 1905. The net income for 1903 and 1904 was declared a dividend and turned over to the C., H. & D. as such, but the 1905 results were cleared direct to the income of the parent road and so handled thereafter. The Cincinnati, Indianapolis & Western assumed the $3,162,000 of first mortgage bonds and $419,000 of equipment notes of the Indiana, Decatur & Western and issued $4,722,000 of its own first mortgage bonds to refund the debt of the Cincinnati, Hamilton & Indianapolis and for other purposes. The C., H. & D. guaranteed the principal and interest of this issue, it having similarly guaranteed the $933,000 previously mentioned of the $3,162,000 Indiana, Decatur & Western bonds. In the refunding process, the $2,000,000 of the general mortgage bonds of the Cincinnati, Hamilton & Indianapolis which had been issued to the C., H. & D. were redeemed at par in the new issue just mentioned. We have already shown that the C., H. & D. originally acquired the $2,000,000 of Cincinnati, Hamilton & Indianapolis bonds in the exercise of its complete control of that road by causing their issue to itself in repayment of debts of the subsidiary company representing mostly operating deficits and interest. This is worthy of emphasis, for the new bonds, thus seen to have been

based not on property but on deficits and interest, together with other bonds of the same issue separately acquired, were later sold to brokers at prices ranging from 92 to 95½, with an average price of 92.9 on 2,472 bonds.

Up to June 30, 1904, but few changes occurred in the capital stock of the new C., H. & D. and those were of a minor character, due to exchanges of stock already mentioned. Appendix 5 shows these changes and also the variations in the amounts of funded debt from year to year. For the single year 1898, $400,000 of notes appear in the latter class, having been put out in connection with the purchase of the stock of the Indiana, Decatur & Western. The following year $60,000 in real estate mortgages were issued. The most marked increase in funded debt was in 1901 when $1,200,000 of 4 per cent first mortgage bonds were added to the company's liabilities. These bonds had been authorized by one of the predecessor companies, the Cincinnati, Dayton & Chicago, in 1892, but had never been marketed. The application of the proceeds thereof can not be traced. In 1901 also a decrease of $130,000 occurred in outstanding bonds of an earlier issue. It is noteworthy that on June 30, 1904, the company's books recorded but $17,000 of loans and bills payable outstanding.

In the main, the increases to be noted in Appendix 5 in the property accounts represented actual acquisitions, although there are included therein certain items which, according to the classification now prescribed by this Commission, were erroneously assigned thereto. Such items, up to June 30, 1904, aggregated $352,093.23, net.

Reference has already been made to a 2 per cent dividend on common stock amounting to $160,000, which was declared in this period and charged to profit and loss. This dividend was paid in December, 1903, and therefore should have been shown in the company's annual report to this Commission for the year ended June 30, 1904. It was not shown in the report for that year or in any other report; in fact the flat statement was made in the 1904 report that no dividend on common stock had been declared in that fiscal year. When that report was compiled and presented the management was in the hands of the syndicate which succeeded the Shoemaker-Woodford interests. That the omission was willful and not accidental is shown by the fact that to conceal this falsification of returns further false entries were made in the 1904 report through arbitrary changes in certain 1903 figures required to be repeated therein. The report was attested by Eugene Zimmerman as president and Geo. W. Lishawa as auditor. When the Commission directed the attention of the C., H. & D.'s accounting officials to these changes in 1903 figures it received the following explanation: "Some changes were

made in 1903 figures, in order to dispose of items belonging in previous years, account of reorganization."

Because of the interest of J. P. Morgan & Company in C., H. & D. affairs subequent to 1904, it seems desirable at this point to say something of that firm's connection with the C., H. & D. in this earlier period. The dividend account covering the 2 per cent payment on C., H. & D. common in December, 1903, shows that of the $160,000 then disbursed, the sum of $47,178 was paid in five checks to Morgan & Company. This is the equivalent of the dividend on 23,589 shares, but the stock record of the C., H. & D. shows no common holdings whatever in the name of J. P. Morgan & Company. That record did show that the dividends on the following holdings had been paid by said checks to the order of J. P. Morgan & Company:

Stockholder of record.	Shares.
W. A. Hamilton	5,019
H. O. Smith	7,348
C. J. Walsh	5,000
J. H. Spohr	5,000
Thos. W. Joyce	1,222
Total	23,589

According to the testimony in this proceeding of a representative of the Morgan firm these shares had been acquired at different times in the year 1901 and were owned by it until the sale of 20,286 thereof in July, 1904, to the syndicate, as later described. In this latter transaction also the name of J. P. Morgan & Company never appeared as a vendor, but their stock was disposed of in the name of Henry F. Shoemaker. The same representative testified that while this stock was so held the firm had no representative on the C., H. & D. board, was not the fiscal agent of the company, and did not participate in any way in the conduct of its affairs.

It was during the latter part of the 1895–1904 period that a plan was conceived and considerable work was done toward obtaining coal traffic for the Dayton-Ironton branch to replace the coal from its local fields which were approaching exhaustion. This plan contemplated the construction of a low-grade extension from Gallia into Ironton, the bridging of the Ohio River at that point, and the control of extensive coal fields in Kentucky with a road to connect those fields with the new bridge. The story of this project and its outcome are told further on in a separate section beginning at page 148.

III. C., H. & D. COMMON-STOCK SYNDICATE, 1904.

During the period from July 7, 1904, to December 4, 1905, the C., H. & D. and Pere Marquette were very closely affiliated, both in control and operation, as a result primarily of the purchase by the

former of 110,000 shares of the common stock of the latter. This purchase was first formally authorized by the C., H. & D. board on July 7, 1904. It was consummated on the same day. Although strictly speaking that was the beginning of the control and the commingling of affairs, yet antedating occurrences must be considered in order to understand the reorganization of the C., H. & D. directorate and the resultant corporate acts of that day, of which this was one.

The story of the Prince syndicate of September 29, 1902, and its control of the Pere Marquette through to June 30, 1904, has already been told. It was testified before us by one of the promoters that the original idea of that syndicate was that the Pere Marquette should buy the control of the C., H. & D., but on account of strong opposition from certain large subscribers that plan was abandoned. The plan ultimately adopted and followed was that the C., H. & D. should purchase control of the Pere Marquette. Under this plan the promoters must first gain control of the C., H. & D. The capital stock of the latter amounted to $16,000,000 in par value, of which $8,700 was held in its treasury and $1,074,500 did not have voting rights. Thus 74,585 shares were needed for voting control.

In connection with the syndication of that stock, which will now be taken up, attention is directed to the fact that, as previously shown, all of the C., H. & D. common and a portion of the 5 per cent preferred represented water poured into the capitalization in the 1895 consolidation by which the company was formed.

1. *Organization and membership.*—To secure actual voting control it became necessary for the promoters to buy the 74,585 shares outright. The control then vested, as for many years previous, in what was known as the Shoemaker-Woodford management.

To accomplish their object the promoters organized a new syndicate, known as the C., H. & D. common-stock syndicate. Large subscriptions were necessary, and to obtain them the promoters pledged the C., H. & D. to the purchase of a controlling interest in the Pere Marquette; and they pledged the Pere Marquette and C., H. & D. to a guaranty of $3,650,000 of the bonds of a third carrier and its subsidiary, to purchase of the control of a fourth carrier, to trackage contracts, to express contracts, and to equipment contracts. Practically every subscription of size was bought with a price separate and distinct from any anticipated syndicate profits, which price was ultimately to be paid by one or the other or both of the carriers respondent. So seriously did these manipulations affect the financial stabilty of these carriers that a full statement of them will be made. The ostensible corporate acts of July 7, 1904, were done by officials who had, as individuals, interests in the syndicate or repre-

sented interests in the syndicate and who therefore abused their trusts for personal gain.

By May 5, 1904, preliminary plans had matured to a point where there was drawn up an instrument described as—

Memoranda for agreements between the local parties, the bankers, the voting trustees, the northern company, the southern company, and the local company,

and signed by L. B. Pierce, Newman Erb, F. H. Prince, Thos. H. Tracy, Jas. J. Robison, and Wm. Hardee. It is set forth in Appendix 10 and becomes intelligible if the following equivalents are read for the parties as therein described:

For the—	Read—
Local parties	Toledo-St. Louis parties.
Bankers	F. H. Prince & Co.
Northern company	Pere Marquette.
Southern company	C., H. & D.
Local company	Toledo Ry. & Terminal Co.

Tracy, Robison, and Hardee were of Toledo, and with Pierce, of St. Louis, representing the Commonwealth Trust Company of that city and a St. Louis syndicate, controlled the stock and bonds of the Toledo Railway & Terminal Company, the "terminal company," as it is designated herein. The Pere Marquette control was represented by Erb and Prince. The latter represented also his firm, F. H. Prince & Company. This memorandum agreement covered practically all the important features of the proposed, and ultimately effected, syndicate operations.

The formal agreement covering the creation of the C., H. & D. common-stock syndicate was dated May 19, 1904. It provided for the purchase of approximately 65,000 shares of the common stock and 10,000 shares of the preferred stock of the C., H. & D. at prices not exceeding $125 and $110 per share, respectively. By its provisions the subscribers appointed George W. Young, Dumont Clarke, and Valentine P. Snyder, of New York City, Lawrence B. Pierce, of St. Louis, and George H. Norman, of Boston, as syndicate managers and agents for the subscribers, and empowered the managers to contract for the purchase of said shares at the prices named and under such terms as the managers might deem expedient. This C., H. & D. syndicate agreement was not to be binding until subscriptions should be secured aggregating $8,125,000, the cost of 65,000 common shares at $125 per share. Not more than 30 per cent of the several subscriptions was to be called for within 30 days, and not more than 25 per cent additional within 8 months. The managers were empowered to borrow money to make payments due under any purchase contract, and to pledge purchased stock under such loans. The pre-

ferred stock might be sold at not less than par, any loss to fall upon the subscribers pro rata. The managers might add to their number, fill vacancies, and were entitled to expenses and reasonable compensation. It was further provided that they should deposit common shares, and might deposit preferred shares, under a voting trust agreement for five years, a majority of the voting trustees to be nominated by the managers and approved by a majority in interest of the subscribers. Additional shares of stock might be accepted by the voting trustees upon approval by a majority of their number. It was provided also that any subscriber in default on his subscription might be excluded from further participation in the transaction, in the discretion of the managers. Subscriptions were payable at the United States Mortgage & Trust Company in New York City.

To secure the shares requisite to the C., H. & D. control, an agreement dated May 28, 1904, hereinafter called the "vendors' agreement," was negotiated. The parties thereto were the "vendors," Henry F. Shoemaker, Eugene Zimmerman, and such other C., H. & D. stockholders as should execute the agreement; the syndicate managers, as already named; and the "trustee," the North American Trust Company. The vendors agreed to sell and the managers to purchase 65,000 shares of the common stock of the C., H. & D. at $125 per share and 10,000 shares of its 5 per cent preferred stock at $110 per share, a total of $9,225,000. Payments therefor were to be in cash, with interest at 4 per cent per annum on deferred payments. The agreement was to become effective when signed by the managers and the vendors and deposited with the trustee, whereupon, and not later than June 20, 1904, the latter was to give notice to the managers of its receipt. The first payment, $5,612,500, was to become due and payable not more than 18 days after the filing of such notice, and upon its payment the managers were to receive 10,000 shares of the preferred and 29,000 shares of the common stock. Between the time of its execution and the due date of the first payment, and after that until the second payment became due, the C., H. & D. board was not to authorize any acts other than those necessary in the usual conduct of its business, or to change in any way the character of the corporation, its shares or securities, or to incur any extraordinary obligations or any obligations except those incidental to its ordinary business. Finally, the vendors, at the time of the first payment, were to procure and deliver to the managers the resignations of 8 of the 13 directors of the C., H. & D. and aid in electing successors nominated by the managers. The voting power on the 36,000 shares of undelivered common stock was to remain with the vendors until the second payment. That payment, $1,100,000, became due 60 days after the making of the first, and thereupon 3,000 additional shares of common

stock and the voting power on the 33,000 remaining with the trustee were to be delivered to the managers. Contemporaneously the latter were to deliver to the trustee their executed promissory note for the amount of the last payment, $2,512,500, to be payable, with interest at 4 per cent, one year after the first payment, and to be secured by the 33,000 shares in the hands of the trustee. This note and its terms and conditions should then supersede the vendors' agreement as the expression of the rights of the syndicate managers and vendors.

The vendors who signed this agreement and the amounts of C., H. & D. stock which each agreed to sell were as follows:

	Shares common.	Shares preferred.
Henry F. Shoemaker	44,550	6,400
E. Zimmerman	12,000	2,400
Rush Taggart, by Henry F. Shoemaker	1,450	200
M. D. Woodford, by George R. Balch, attorney	7,000	900
Total	65,000	10,000

Included in Shoemaker's 44,550 common shares were 20,286 shares belonging to the firm of J. P. Morgan & Company, in whose behalf he had been authorized to sign, but in his own name.

The subscriptions to the syndicate aggregated only $8,125,000, just enough to meet the requirements for the purchase of 65,000 shares of common stock. The purchase of the 10,000 preferred shares was provided for otherwise, as follows: The arrangements prior to July 7, 1904, included a contract for sale of the preferred, immediately upon its acquisition, to Rudolph Kleybolte & Company, of Cincinnati and New York, at a price 10 points below its cost to the syndicate, the vendee agreeing to pay the purchase price of $1,000,000 on or before July 6, 1904, but not to require delivery until October 14, 1904. This contract did not provide specifically as to the exercise of the voting power in the stock meanwhile, but the obvious intention of the managers was to retain that power until final adjournment of the regular annual meeting of the C., H. & D. stockholders on October 11, 1904. This delivery of the preferred stock under this sale would have shorn the syndicate of the voting control of the C., H. & D. after October 14, 1904. Whether or not the retirement of the 5 per cent preferred stock which, as events transpired, was well under way before the latter date, was recognized as necessary before the plans of the C., H. & D. syndicate were completed does not definitely appear.

The aim of the promoters was, of course, to gain the contemplated voting control of the C., H. & D. as promptly as possible. Under the vendors' agreement such control could not pass until both the

first and second payments, requiring $6,712,500 of cash, were made to the vendors. But as not more than 30 per cent of the several subscriptions was to be called within 30 days from the effective date of the syndicate agreement, and not more than 25 per cent additional within eight months, the managers would be far short of the amount necessary for the first and second payments, even with the $1,000,000 available from the sale of the preferred. As it was finally worked out, the subscribers were called upon for the full 30 per cent, and $3,392,500 was borrowed by the managers, $2,500,000 from the United States Mortgage & Trust Company at 5 per cent per annum plus 3 per cent commission, secured by pledge of 32,000 shares of C., H. & D. common stock; $275,000 also from the United States Mortgage & Trust Company on 5 per cent notes indorsed by Newman Erb, L. B. Pierce, James J. Robison, Frederick H. Prince, Rudolph Kleybolte, and E. Zimmerman, and secured by the syndicate's equity in the same 32,000 shares; and $308,750 each from the Commonwealth Trust Company and the terminal company as advance payments on their respective subscriptions, 6 per cent interest thereon to be paid until such subscriptions became due.

The $2,500,000 loan by the United States Mortgage & Trust Company was participated in by some thirty-odd banks and individuals as indicated in Appendix 11, and was secured only by stock which, because of the circumstances recited, was of highly speculative value.

Under the original draft of the vendors' agreement the first payment became due 18 days after June 10, 1904. In the agreement as executed this latter date was changed to June 20 at the request of the vendees, as they were unable to secure sufficient subscriptions within the time limit. Eventually the date of July 6, 1904, was fixed for the first payments on the stock and the reorganization of the C., H. & D. board, but the board meeting on the 6th had to be adjourned to the day following because the managers had not made the required payment.

Before recounting the personnel of the new board of directors and the acts of its first and most memorable meeting, and further to emphasize the significance of those acts, it will be well to consider the make-up of the C., H. & D. syndicate and the influences which induced the subscriptions thereto. The following list takes into account various substitutions of subscriptions made subsequent to the underwriting as first certified to by the United States Mortgage & Trust Company on June 17, 1904:

Commonwealth Trust Company (of St. Louis)	$812,500
Toledo Railway & Terminal Company	812,500
Mark T. Cox	625,000
Vermilye & Company	625,000

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F. H. Prince & Company	$537,500
George A. Fernald & Company	625,000
American Car & Foundry Company	625,000
A. S. White	6,250
Frederick Ayer	312,500
George H. Norman	312,500
Rudolph Kleybolte & Company	250,000
Newman Erb	187,500
Union Trust Company (of Detroit)	125,000
C. D. Simpson	62,500
Wm. L. Bull	62,500
H. C. Pierce	62,500
E. Zimmerman	531,250
J. S. Bache & Company	125,000
Eben Richards	250,000
C. A. Starbuck	125,000
Edward Tilden	187,500
E. N. Foss	62,500
Samuel R. Shipley	87,500
Provident Life & Trust Company (of Philadelphia)	312,500
Harvey Fisk & Sons, agents	312,500
C. K. Davis	62,500
Nathan S. Beardslee	25,000
Total	8,125,000

The subscription of Newman Erb for $187,500 was made for the following interests:

	On—
Newman Erb	$62,500
Louis Strasburger	25,000
Simon Rothschild	37,500
Street, Wykes & Company	62,500

Apparently William C. Miller paid the calls on the subscription of A. S. White for $6,250. It is of course possible that other subscriptions listed above may have been divided among other holders of beneficial interest.

The first two subscriptions were identical in interest. The second was for and on behalf of the Toledo Railway & Terminal Construction Company, hereinafter called the "construction company," which had constructed the belt line railway of the terminal company in and about Toledo, Ohio. The construction had been financed through the Commonwealth Trust Company, which, with the construction company, held complete control of the terminal company. Their substantial subscriptions, aggregating one-fifth of the total, were bought by the syndicate promoters for these considerations: (*a*) A pledge to provide purchasers, at par and interest, for the $3,500,000 of bonds issued by the terminal company and largely owned by the two subscribers, who had failed to find a market therefor up to that time; (*b*) a pledge that the initial cash payment on

the purchased bonds should be sufficient to meet the cash payment required on the subscriptions; (*c*) a pledge that the Pere Marquette and C., H. & D. would jointly and severally guarantee the payment of the principal and interest of said bonds, and also of $150,000 of the bonds of the Toledo Riverside Railway Company, a subsidiary; (*d*) a pledge that the two guaranteeing companies should accept the 5 per cent preferred cumulative stock of the terminal company in payment for any interest they might be obliged to pay under their guaranty; (*e*) a pledge that the Pere Marquette and C., H. & D. should enter into a joint and several agreement for the use of the tracks and terminal facilities of the terminal company; and (*f*) a pledge that the Toledo-St. Louis interests should have representation on the C., H. & D. board in proportion to their stock in the pool.

In connection with these two subscriptions, particular reference is made to the story of the financing and construction of the terminal company as related in Appendix 12. That tells in detail how two syndicates, one at Toledo and the other at St. Louis, first brought the terminal company into being; how, then, finding their holdings of its bonds unmarketable, they linked their fortunes in that venture with the C., H. & D. common-stock syndicate, making large subscriptions and loans to the latter in return for the promise of a market for their bonds at par; and how, finally, with their bonds marketed, and a hand in the control and management of both the Pere Marquette and C., H. & D., they sold their worthless bonus terminal company stock through the C., H. & D. to the Pere Marquette; and in the end distributed to their members, as profits in both ventures, almost $2,300,000. It is a story which deserves to be presented in the body of this report, but space necessities and the importance of avoiding a serious interruption in the continuity of the recital of the affairs of the Pere Marquette and C., H. & D. require that its details be presented in the appendix.

The preliminary agreements of the C., H. & D. common-stock syndicate provided that, with control established, the C., H. & D. should enter into a contract with the Pere Marquette for the reciprocal preferential interchange of traffic, and should contract with F. H. Prince & Company for the purchase of 100,000 shares of Pere Marquette common stock at a price of $125. This was much in excess of the price of $85 paid by the Prince syndicate, through which much of said stock had been assembled, and even more in excess of the actual market price of the stock, as shown in Appendix 13. The opportunity to market so advantageously a stock that had never paid a dividend except under the management of the Prince syndicate, and then only at the expense of maintenance to a very considerable degree, sufficiently accounts for several subscriptions to the C., H. &

D. syndicate, for the record shows the following subscribers to have held interest in the Prince syndicate at least to the extent indicated, although the record does not indicate exactly the number of those shares sold to the C., H. & D.:

	Pere Marquette common shares.
Mark T. Cox	5,000
F. H. Prince	20,000
F. H. Prince & Company	20,000
Frederick Ayer	4,500
Newman Erb	6,000
Provident Life & Trust Company	5,000

Mark T. Cox was head of the firm of Robert Winthrop & Company which later handled several equipment trust issues of the Pere Marquette and C., H. & D.

The subscription by Vermilye & Company for $625,000 was for and on behalf of the United States Express Company. Frank H. Platt, the general counsel and a director of the latter company, who conducted its negotiations in the matter, very frankly stated, as to the purpose of that subscription:

> It was to protect its business on the C., H. & D. road and to gain the Pere Marquette mileage. That was the inducing motive.

The subscription of George A. Fernald & Company for $625,000 was on behalf of certain stockholders of the Chicago, Cincinnati & Louisville Railroad. Wm. A. Bradford, jr., was the largest single stockholder, holding some 75 per cent of all outstanding. Fernald and his firm held several hundred thousand dollars. This road ran from Cincinnati to Griffith, Ind., some 254 miles, an extension on the north end of 41 miles from North Judson to Griffith and an extension on the south end of 46 miles from Cottage Grove, Ind., to Cincinnati having been opened for operation only a few months previously. The consideration for the Fernald subscription was the pledge that the Pere Marquette should purchase the entire issue of Chicago, Cincinnati & Louisville stock, $4,206,000, for $3,500,000 in Pere Marquette 4 per cent bonds, and that $500,000 additional of such bonds should be reserved for improvements on or equipment of that road. These bonds were to be issued under an indenture to the American Loan & Trust Company, of Boston, trustee, dated July 1, 1904, securing the bonds by deposit of the stock. They were to be guaranteed, principal and interest, by the C., H. & D. or were to be replaced by joint and several bonds of the two companies, which, in addition, were to guarantee, while any of said original or substituted bonds were outstanding, the payment of interest on all Chicago, Cincinnati & Louisville outstanding bonds, $6,600,000.

This subscription was not delivered until the subscriber was given an indemnifying agreement by F. H. Prince & Company and New-

man Erb, dated June 10, 1904, whereby they agreed jointly and severally to assume the subscription in case the negotiations then pending for the acquisition of the Chicago, Cincinnati & Louisville stock were not consummated and carried out on terms satisfactory to Wm. A. Bradford, jr., on or before the due date of the first installment on said subscription, not later than June 30.

A contract for the construction of 5,000 freight cars and 50 cabooses was the consideration received by the American Car & Foundry Company for its subscription for $625,000. The syndicate agreement as to this transaction was originally signed by Newman Erb. The contract was executed on behalf of the C., H. & D. by Eugene Zimmerman, then its vice president, but neither the executive committee nor the board of directors had previously authorized him or any other officer to negotiate or execute any such contract. Such evidence as is available would tend to show that the price received by the equipment company for the cars was not excessive. It may be noted that W. K. Bixby, chairman of the board of the American Car & Foundry Company, was a member of the Prince syndicate and a director of the Pere Marquette.

As to the subscription of Rudolph Kleybolte & Company for $250,000, it is of record that this firm was then under contract with the syndicate to buy from it at par 10,000 shares of C., H. & D. preferred stock which had been sold to it at 110, and was also under contract to purchase $2,000,000 of the bonds of the terminal company at 97 and interest, with an option on $500,000 additional at the same price. Later on this firm financed a purchase of equipment by the C., H. & D., involving the issuance of equipment notes for $1,080,000 and payments of $120,711.03 in short term notes.

George H. Norman contributed part of the Pere Marquette stock sold to the C., H. & D. and procured the contribution of others in that sale to a large amount.

The subscription for $125,000 in the name of the Union Trust Company (of Detroit) was made by W. C. McMillan and T. H. Newberry in the name of the company, but in their personal interest, in the expectation of profit and through personal friendship with Frederick H. Prince. They later gave the trust company an agreement holding it free from any liability on account thereof. McMillan was a director of the trust company and chairman of its executive committee. The execution of the subscription agreement in the name of the company was without prior authority, but the executive committee later confirmed that action.

The subscription of Wm. L. Bull for $62,500 was made purely as a speculation.

Eben Richards was vice president of the Mexican Central Railroad, in which company F. H. Prince was also interested.

H. C. Pierce was father-in-law of Eben Richards and friendly to the Prince interests.

Eugene Zimmerman's interest in the plans of the promoters is evident throughout; in fact, he was one of them. As already stated, he was in addition a signer of the vendors' agreement for 12,000 shares of C., H. & D. common and 2,400 shares of preferred. He became president of the C., H. & D. in the change of management following the consummation of the plan.

The New York Air Brake Company, at the solicitation of Prince and Erb, subscribed for $125,000, through its president, C. A. Starbuck, for reasons stated by the latter, thus:

I went to see them, hearing they were going to place a large order for new equipment, locomotives and cars, and I wanted to get the brake business for the New York Air Brake Company; they said if I wanted the business I would have to subscribe to the syndicate and take some of the underwriting; they said the car builders and locomotive builders were doing it and the Westinghouse people would do it unless I did, and without it I could not get the business; and on that condition I made the subscription to the syndicate for, I think, a thousand shares.

Swift & Company were represented through the subscription of Edward Tilden for $187,000, and Dumont Clarke, one of their directors, was a syndicate manager. G. M. Cumming, who saw Tilden regarding this subscription, testified in the *Bradford Case*, *supra*, with reference to the reason therefor:

A. They thought in the first place, as I understood it, it was going to be of interest to them to have a company in which they had a financial interest, and they also desired, I think, to protect themselves against what they considered an unreasonable advance in rates by having an interest in the company.

Q. And they made this subscription, as you understood it, in order to in some way or another protect their business as packers?

A. That was my understanding.

Q. And the advantages that would come from their being interested in this railroad company?

A. So I understood.

The subscription of E. N. Foss for $62,500 was made as a speculative investment.

Nothing specific is of record as to the purpose underlying the subscription of Samuel R. Shipley for $87,500. He was at that time president of the Provident Life & Trust Company, of Philadelphia, which subscribed for $312,500, and was also a director of the Pere Marquette. The interest of his company in subscribing has already been stated.

Harvey Fisk & Sons, in subscribing for $312,500, acted as agents for the American Locomotive Company, the consideration being

orders by the Pere Marquette and C., H. & D. for 40 locomotives. These orders were dated June 22, 1904, and in the case of the C., H. & D. the order was executed by Eugene Zimmerman as vice president without authority from the board of directors or executive committee. The record does not show that the prices paid for these locomotives were unfair.

This brief recital of the motives or considerations inducing the various subscriptions to the syndicate makes it plain that, as stated before, the bulk of the subscriptions were bought with pledges which were to be fulfilled largely by the two carriers, the C., H. & D. and the Pere Marquette. So far as the C., H. & D. was concerned, the first steps in discharging its share of the promoters' pledges were taken at the meeting of its board on July 7, 1904. The acts of the board of directors at this meeting were purely perfunctory. All the papers and agreements acted upon had been prepared previously; they were presented under the supervision of Thomas H. Tracy, already mentioned as of the Toledo group; and they were acted upon by the directors practically without discussion.

2. *Reorganization of C., H. & D. board and management in syndicate interest.*—On July 6, 1904, the board was composed of the following 13 members: Henry F. Shoemaker, Eugene Zimmerman, Alfred Kessler, George P. Benjamin, George R. Balch, W. A. Shoemaker, C. A. Mayer, Heman Dowd, Joseph B. Foraker, M. D. Woodford, Lawrence Maxwell, jr., F. H. Short, and Rush Taggart.

Pursuant to adjournment from the preceding day, this board met at 12.45 p. m. of July 7, 1904, in the office of the company in New York City, the first eight directors named above being present. The first business of the meeting was the acceptance of the eight resignations required by the terms of the vendors' agreement, those resigning being directors Short, Taggart, Dowd, Benjamin, W. A. Shoemaker, Kessler, Balch, and Mayer. The following were elected to fill the eight vacancies: Thomas H. Tracy, George M. Cumming, James J. Robison, Bradley W. Palmer, Rudolph Kleybolte, Alex. B. Pierce, James Phillips, jr., and Eben Richards, and being present they took oath of office and their places as members of the board.

The new board then elected Eugene Zimmerman as president of the company, vice M. D. Woodford, resigned; George M. Cumming as vice president, vice Zimmerman, resigned; R. B. Wilson as secretary, vice Short, resigned; and accepted the resignation of Henry F. Shoemaker as chairman of the board. Of the old members who remained on the reorganized board, Henry F. Shoemaker, Zimmerman, and Woodford were vendors of C., H. & D. stock to the new control. Of the new members Tracy and Robison represented the Toledo-St. Louis interests; Cumming represented the United

States Mortgage & Trust Company; Palmer and Phillips represented F. H. Prince and F. H. Prince & Company; Richards's affiliation with the Prince interests has already been mentioned; and Kleybolte was a member of the syndicate with other interests, as before described, he having insisted on being included in the directorate. Pierce was replaced on July 20 by Russell Harding, the new operating manager of the two properties, who was also a director of the Commonwealth Trust Company and a member of the St. Louis syndicate.

3. *C., H. & D. syndicate pledges fulfilled.*—The reorganized board, immediately after the election of corporate officers, authorized the execution of a 99-year trackage contract, dated June 25, 1904, between the terminal company and the Pere Marquette and C., H. & D., jointly, granting the use of the terminal company's tracks and terminal station and facilities. The grantees agreed each to pay its proportion of taxes, maintenance and operating costs, and in addition each agreed to pay one-half of $82,125 per annum, the latter amount being about equivalent to one-half the yearly interest on the terminal company's issue of $3,500,000 4½ per cent bonds, and on $150,000 of 5 per cent bonds issued by its subsidiary, the Toledo Riverside Railway Company. One consideration of this agreement was that the grantees should jointly and severally purchase and guarantee these bonds in accordance with a certain contract to be simultaneously delivered. Directors Shoemaker and Tracy were excused from voting on this contract, the latter at his own request because of his interest in the property. The C., H. & D. stockholders approved this contract on the 19th of October, 1904.

Thus was fulfilled one of the considerations promised by the promoters to the Toledo-St. Louis parties for their large subscriptions to the C., H. & D. syndicate. Another of those considerations was the joint guaranty of principal and interest of the bonds in question by the C., H. & D. and Pere Marquette. This was the next matter acted on by the reorganized board. It authorized the execution of the contract dated July 1, 1904, required by the before-described trackage contract to be delivered simultaneously therewith. Under the terms of that contract the C., H. & D. and Pere Marquette jointly agreed to purchase said bonds at 97 and interest, and to accept delivery as follows: Thirty per cent on July 5, 1904; 35 per cent on or before September 5, 1904; 35 per cent on or before October 5, 1904. The purchasers were granted the right to require that the terminal company's bonds be replaced by new bonds to be issued under a new mortgage satisfactory to them. It was agreed that the purchasers should negotiate and sell the bonds so purchased, and, in order to enhance the price thereof and to obtain full value therefor, should

jointly and severally guarantee the payment of the principal and interest thereof; that, if the purchasers should ever be required to make any payments on account of their guaranty of the interest, such sums should constitute a claim against the terminal company, in liquidation of which the purchasers agreed to accept the 5 per cent cumulative preferred stock of that road; that the net earnings from the terminal properties should be applied toward the payment of bond interest before any dividends on stock should be declared; and also, that the fixed rental provided in the trackage contract should be used only to pay interest and operating expenses.

The C., H. & D. board, in addition to authorizing the execution of the July 1 contract just described, formally authorized the indorsement of the required guaranty on the bonds and empowered the president and secretary to execute a contract for the sale of said bonds. Shoemaker and Tracy were also excused from voting on these matters. The C., H. & D. stockholders approved both contracts on October 19, 1904.

The sale of the terminal company's bonds was effected under a contract dated July 7, 1904, between the Pere Marquette and C., H. & D., as "sellers," and Rudolph Kleybolte & Company, as "purchasers," whereby $2,500,000 in par were to be taken at 97 and interest and $800,000 in par at 97½ and interest, provided the before-described joint guaranty of the sellers was first indorsed on the bonds. It will be noted that according to the contracts a profit of one-half point would have been realized by the sellers on the $800,000 block sold at 97½. Their accounting records, however, do not carry any entries covering either the purchase or sale of any of these bonds, and it seems quite evident that the provisions for the purchase and sale of the bonds by the Pere Marquette and C., H. & D. were merely precautionary, being thought to legalize the guaranty.

Next the reorganized board authorized the issue of $25,000,000 of C., H. & D. 4 per cent refunding mortgage bonds dated July 1, 1904, due 1954. The stockholders had authorized an issue of such bonds in December, 1900, a fact known and depended upon by the promoters in their plans.

The fourth piece of business was one of vast importance to the C., H. & D., namely, the purchase of 110,000 shares of the common stock of the Pere Marquette. In this connection reference is made to the facts heretofore set forth, bearing on the value of these shares. It was the intention to supplement this large block of stock by other shares to be acquired from the Pere Marquette treasury through a collateral transaction and thus provide a means of assured voting control. This sale was the cornerstone in the whole structure built by the original promoters, whose aim was the sale

of their Pere Marquette stock. It was presented to the board by Thomas H. Tracy in the form of a letter dated July 5, 1904, from F. H. Prince & Company, addressed to the C., H. & D. The opening sentence reads:

> At the request of officers of your company we have secured the right and option to offer to you 110,000 shares of the Pere Marquette Railroad Company of the par value of $100 each represented by certificates of the said railroad corporation or by voting trust certificates, including shares belonging to ourselves, for the price of $125 each, upon the terms and conditions hereinafter named.

Prior to this meeting the subject had never been presented either to the board or the executive committee, and no officer of the C., H. & D. had been authorized to negotiate for such an option. The letter named the terms and conditions of the proposed sale and contained the proviso—

> that a material consideration for and condition of the sale of the said stock shall be the due execution and delivery of a trackage agreement between your company and the Pere Marquette Railroad Company and others in form substantially as presented herewith.

This latter contract will be treated of later. The letter concludes with the statement that if the offer is accepted, Prince & Company agree to accept such "reasonable and proper commission" as should thereafter be agreed upon, provided a cash payment of $250,000 be made to them at once as a portion of said commission.

In connection with this purchase of Pere Marquette stock there was next presented a report, dated May 16, 1904, made to the United States Mortgage & Trust Company by one J. T. Odell, referred to in this record as formerly a railroad official, on the proposed union of the two properties and the value of the Pere Marquette stock. This report concludes with the following collection of generalities, evidently calculated, not to influence wavering directors, that being unnecessary, but to bolster up the record:

> Many persons, in criticizing the value of any railroad stock, overlook the main proposition of capitalization per mile of road and jump at a conclusion without reasoning. The capitalization of the roads in question by comparison are extremely low. I can find nothing to compare with them. A glance at the map reveals a producing and consuming territory of vast proportions. This great country is entitled naturally to an increase in its business domestically of 3 per cent per year and in its export business a great deal more. I presume this combination can be said to be the last of the trunk lines and among the best. No person could place a prospective value on the common stock of the Pere Marquette. Its value under the plan presented to me is in my judgment greater than $150 per share, and its acquisition at that price by the Cincinnati, Hamilton & Dayton would be a conservative and highly profitable investment. An examination by the most skeptical will verify this. The operation of the two roads as a unit is worth a large sum, far more than any value that attaches to them separately, but I have endeavored to treat only of known quantities.

The board accepted the offer of F. H. Prince & Company, and authorized the execution of a contract with that firm dated July 6, 1904, whereby the C., H. & D. agreed to purchase the 110,000 shares at the price of $125 per share, payable at the option of the C., H. & D. in cash, or, $75 per share in the 4 per cent refunding mortgage bonds just previously authorized, plus $50 per share in new C., H. & D. common stock or in two-year, noninterest-bearing notes issued under an indenture with the United States Mortgage & Trust Company dated July 6, 1904. The C., H. & D. agreed to accept only such Pere Marquette stock as was delivered or designated by the sellers, also to pay the latter forthwith $250,000 in cash as a portion of their commission, the balance thereof to be fixed by agreement between the sellers and a committee appointed by the C., H. & D., concerning which further facts are presented in this report at page 130. The execution of the trackage contract with the Pere Marquette was included as a moving consideration to the stock purchase contract.

Among the resolutions passed on this subject was one whereby 50 per cent of the Pere Marquette stock acquired should be deposited under the before-described 4 per cent refunding mortgage bonds and 50 per cent under the collateral trust indenture securing the two-year notes to be issued as part of the purchase price. Upon the liberation of the latter stock it was to be deposited as additional security under the refunding mortgage. All of the acts of the board in this purchase were approved by the C., H. & D. stockholders at a meeting on October 19, 1904.

The next business before the board was to provide for the issuance of $5,500,000 of two-year notes wherewith to pay $50 per share on account of the price of the Pere Marquette common stock. These purchase money gold notes were issued under an indenture dated July 6, 1904, with the United States Mortgage & Trust Company and were supported wholly by an equal amount in par of the purchased Pere Marquette common stock. They bore no interest and the C., H. & D. had the right of redemption, with certain dividend adjustments, at or before maturity by exchanging therefor (*a*) note or notes of substantially the same terms convertible into C., H. & D. common stock, par for par, or (*b*) C., H. & D. common stock, par for par.

In fulfillment of the requirement in the contract of purchase, the new board, as its sixth piece of business, voted its authority for the execution of an agreement, dated July 1, 1904, with the Pere Marquette and George H. Norman on behalf of himself and other Pere Marquette stockholders. By its terms the two carriers bound themselves for 50 years to the preferential interchange of freight and passenger business; the C., H. & D. was given the right to

build and maintain a physical connection or connections with the Pere Marquette; the C., H. & D. was granted the right for 50 years to the common use of practically all of the Pere Marquette lines at a cost equal to its locomotive-car-mileage proportion of maintenance and taxes on such portions so used; the C., H. & D. agreed that after providing for the accrual of dividends on all classes of its own preferred stock it would advance to the Pere Marquette during the 50 years of the contract sums sufficient to make up any inadequacy of the latter's earnings and receipts from all sources to meet operating expenses, taxes, interest, and all other fixed charges, annual dividends of 4 per cent on all preferred stock, and 4 per cent on common stock from July 1, 1904, to January 1, 1905, and 5 per cent thereafter. In case the earnings of the Pere Marquette for any year or years in the 50-year period should be more than sufficient to pay the items enumerated, including dividends, such excess should be payable to the C., H. & D. in repayment of any advances made, but otherwise the latter would have no claim against the former for such advances. The agreement also gave the C., H. & D. the right within the 50-year period to lease the Pere Marquette outright for not exceeding 99 years on the basis, substantially, of a form of lease attached to the agreement. The Pere Marquette was pledged to take proper corporate action regarding any such lease and also regarding any consolidation of stock, railways, property, and franchises desired by the C., H. & D.

The C., H. & D. stockholders at their meeting on October 19, 1904, approved this trackage and preferential interchange agreement upon condition that the lease therein referred to be made to correspond to the agreement itself by providing that the payments of dividends on Pere Marquette stocks should be subject to the prior application of C., H. & D. earnings to the payment of dividends on all classes of C., H. & D. preferred shares. Any surplus of C., H. & D. earnings could be applied as dividends on Pere Marquette stock together with the surplus from the latter road. On November 2, 1904, the stockholders voted to reconsider their previous action on this matter, but on January 12, 1905, they approved the agreement as authorized by the board. This contract was superseded by the lease described at page 141.

The next two, and final, transactions of importance by the reorganized C., H. & D. board on July 7, 1904, covered the obligations to be undertaken by that company in fulfillment of the promoters' pledges with respect to the subscription of George A. Fernald & Company. As before stated, this subscription was for and on behalf of Wm. A. Bradford, jr., and other stockholders of the Chicago, Cincinnati & Louisville Railroad.

The burdens to be placed upon the C., H. & D. by these pledges of the promoters were expressed in two contracts, the execution of which was authorized by its board at the meeting under discussion. The first of these instruments was a lease and trackage contract in form as submitted to the meeting and made a part of the minutes thereof. Although it was never executed and delivered its authorization by the new board is significant. By this contract the C., H. & D. was granted an outright lease for 99 years of the property of the Chicago, Cincinnati & Louisville in the state of Ohio and rights for the common use of that road during the same period from the Ohio-Indiana state line to Peru, Ind. The C., H. & D. became bound to guarantee the interest on all then outstanding Chicago, Cincinnati & Louisville bonds while any part of the $4,000,000 of Pere Marquette bonds, or bonds substituted therefor, remained unpaid, and also became bound to execute joint C., H. & D.-Pere Marquette bonds for a like amount to replace the original Pere Marquette bonds. The rights of the C., H. & D. to the leased section and also to the joint sections were to terminate not only upon default by it of its undertakings under this contract but also upon any breach of the terms and conditions of the collateral trust indenture. The C., H. & D. agreed to do all that might be necessary to complete the leased section or place it in proper condition and to pay all taxes thereon, and to keep and maintain it in good repair. The Chicago, Cincinnati & Louisville was to provide operating facilities for and to maintain the joint section and to conduct the movement and operation of trains over it. The C., H. & D. was to pay a sum unstated and a locomotive-car-mileage proportion of the taxes on and maintenance of the joint section.

The primary purpose of this lease of a section of the Chicago, Cincinnati & Louisville to the C., H. & D. was to bolster up the legality of the latter's guaranty of the Pere Marquette bonds involved. Then, to safeguard the legality of the lease under Ohio statutes, it was deemed necessary to establish a physical connection between the C., H. & D. and the Chicago, Cincinnati & Louisville, although such a connection already existed at Cottage Grove, Ind., between the Chicago, Cincinnati & Louisville and the Cincinnati, Indianapolis & Western, a proprietary line of the C., H. & D. The new connection with the C., H. & D. was later constructed at Cincinnati.

The second contract which bound the C., H. & D. to the purchase of the Chicago, Cincinnati & Louisville and collateral transactions was one between the C., H. & D. and Pere Marquette, dated July 7, 1904. In connection with the recording of this transaction on the minute books of the C., H. & D., it is important to state that the

agreement attached to that record and therein said to have been acted on by the board on July 7, 1904, is not the one actually before that body on that day and then passed upon by it. The original agreement provided for the acquisition by the C., H. & D. of the *entire* interest of the Pere Marquette in the Chicago, Cincinnati & Louisville, whereas the agreement now attached to the record provides for the acquisition of only a half interest. The latter instrument was not drawn until September, 1904. The record in this proceeding does not determine who directed this falsification of the C., H. & D. minutes. It would appear from the following resolution adopted by the board on October 19, 1904, that those in control were familiar with this condition and considered it necessary to safeguard the contracts by further action:

Resolved, That that portion of the minutes of the meeting of July 7, 1904, which refers to the contract between the Pere Marquette and the Cincinnati, Hamilton & Dayton railway companies with reference to the Chicago, Cincinnati & Louisville Railroad Company's stock, also which refer to the contract and lease with the Chicago, Cincinnati & Louisville Railroad Company, be, and hereby are, approved.

The agreement now a part of the C., H. & D. minutes provides for the sale by the Pere Marquette to the C., H. & D. of an undivided *one-half* interest in (*a*) the former's rights in the entire capital stock of the Chicago, Cincinnati & Louisville; (*b*) the agreement of July 1, 1904, between the Pere Marquette and John F. Wilcox under which said rights were acquired; and (*c*) the collateral trust indenture dated July 1, 1904, with the American Loan & Trust Company, trustee, under which the Pere Marquette bonds were to be issued in payment for the stock. In consideration of this transfer the C., H. & D. agreed (1) to pay one-half of principal and interest of the entire issue of Pere Marquette bonds under the said indenture and one-half of any joint and several bonds issued in substitution therefor; (2) to assume one-half of the liability of the Pere Marquette under the purchase agreement with John F. Wilcox, under the bonds, original or substituted, and under the collateral trust indenture; (3) to perform and comply with all the covenants of the two agreements; and (4) to execute any further instruments necessary to carry its obligations thereunder into effect. Attached to and made a part of this agreement were the before-mentioned Wilcox purchase agreement and the collateral trust indenture of the Pere Marquette which had been authorized by its board of directors on June 28 and approved by its stockholders on June 29, 1904.

Briefly stated, these last-named instruments provided for the purchase by the Pere Marquette of $4,206,000 par value, the entire issue, of Chicago, Cincinnati & Louisville stock for $3,500,000 in Pere Marquette 10-year 4 per cent gold bonds issued under the indenture

which required the deposit of the stock as security for the bonds. The indenture provided for $500,000 additional bonds to be used in improving and further equipping the Chicago, Cincinnati & Louisville. The operation of that road and the right to nominate three directors and certain officers were to pass to the Pere Marquette upon the delivery of the bonds. Complete control, except as to the naming of one director, should be surrendered upon the execution by the C., H. & D. of its guaranty of the bonds, or upon its execution of joint and several C., H. & D.-Pere Marquette bonds in substitution therefor, together with the guaranty provided in the indenture. The Pere Marquette was bound to guarantee the payment of the interest on all Chicago, Cincinnati & Louisville bonds, $6,600,000 par value. It was agreed that, whether fully performed or not, certain construction contracts with John F. Wilcox should be declared fulfilled and satisfied. The latter agreed to pay cash into the Chicago, Cincinnati & Louisville treasury at stated intervals equivalent to the estimated cost of extending the line from Griffith, Ind., to Calumet Park, Ill., or, if Chicago was reached without building any extension, to turn over general refunding bonds of the Chicago, Cincinnati & Louisville equivalent in par to the estimated cost of the said extension. He was also to receive the current assets and to assume the current liabilities of the Chicago, Cincinnati & Louisville as of June 30, 1904; he was to pay principal and interest on $50,000 equipment bonds falling due on July 1, 1904, and to receive an equal amount of general and refunding bonds of the Chicago, Cincinnati & Louisville; he was to pay all interest accruing to July 1, 1904, on all Chicago, Cincinnati & Louisville bonds and equipment obligations; he was to provide for the interest accruing during the year ending June 30, 1905, on the $3,500,000 of Pere Marquette bonds issued for Chicago, Cincinnati & Louisville stock; and he was to own all subsidies and municipal aids previously promised or obtained in the construction of the Chicago, Cincinnati & Louisville.

The last two transactions described, namely, the execution of the lease and contract with the Chicago, Cincinnati & Louisville and of the agreement to purchase one-half of the Pere Marquette's interest in the Chicago, Cincinnati & Louisville, were approved by the C., H. & D. stockholders on October 19, 1904, and again on January 12, 1905. On January 18, 1905, the board again authorized the execution of the lease and trackage contract and also authorized specifically the indorsement of the C., H. & D.'s guaranty on $4,000,000 of the Pere Marquette bonds previously described.

The pledges of the promoters were not all fulfilled on July 7, 1904, by the C., H. & D. board. The pledges to purchase new equipment, by which the subscriptions in the interest of the American Car &

Foundry Company and of the American Locomotive Company had been bought, had previously been fulfilled in part by contracts with those companies dated June 1 and June 22, respectively, executed by Eugene Zimmerman as vice president of the C., H. & D. This he did without the authority of either the board or the executive committee, those bodies never having authorized him or anyone else to execute such contracts; in fact, the matter had not been heard of by them. These contracts are not in the official files of the C., H. & D., but the records show that they were presented to the new executive committee on July 9, 1904, and by it unanimously ratified and confirmed, Zimmerman, Cumming, and Tracy being the members present. It may well be that the executive committee also acted in this matter without authority, for later, on August 11, 1904, the board voted specifically to refer to the executive committee the matter of acquiring additional equipment. The actual acquisition of the equipment from the two subscriber builders was accomplished still later under the terms of various equipment trusts; one for $2,408,339, dated October 1, 1904, entered into by the C., H. & D. with Robert Winthrop & Company, provided for the purchase of equipment, including 20 locomotives from the American Locomotive Company and 2,750 freight cars from the American Car & Foundry Company; and one for $1,977,266, dated October 1, 1904, entered into by the Pere Marquette with Robert Winthrop & Company, provided for the purchase of equipment, including 2,250 freight cars from the American Car & Foundry Company and 20 locomotives from the American Locomotive Company. Also, by an equipment trust amounting to $1,200,711.03 with Rudolph Kleybolte & Company, under date of April 1, 1905, the C., H. & D. purchased some $490,000 worth of other equipment from the American Car & Foundry Company. It is to be noted in this connection that the two banking firms involved in these equipment trusts were, as before stated, represented in the C., H. & D. common-stock syndicate.

There was delay, also, in the fulfillment of the promoters' pledge given to secure the $625,000 subscription of the United States Express Company through Vermilye & Company. At the time this subscription was made, in May, 1904, the United States Express Company was conducting the express business over the lines of the C., H. & D. and its subsidiary companies, in all some 990 miles. The express privileges on this mileage *only* had been granted it by a contract of September 30, 1902, whereby the C., H. & D. received as consideration 40 per cent of the gross express revenues from business over its lines, with a guaranteed annual return of $144,000. This contract became effective November 1, 1902, and was to con-

tinue 15 years, and thereafter until discontinued or modified as provided. June 27, 1904, a new contract was entered into, effective that day, the C., H. & D.'s participation being through Eugene Zimmerman, then its vice president, and T. C. Platt, representing the express company. Its effectiveness was provided until June 27, 1919, and thereafter until discontinued or modified as provided, in other words, a 15-year term like the prior contract. This first of all granted express privileges over the same mileage as did the previous contract, but added:

all other lines of railroad, and all other transportation lines, which the railroad companies, or their successors or assigns, may at any time hereafter, during the life of this contract, construct, own, possess, lease, operate, or acquire or control by any such contract or agreement as will enable the railroad companies to empower or permit the express company to carry on business on and over the same.

The consideration to the C., H. & D. was the same as before, 40 per cent of gross express revenue, with a minimum of $144,000 per annum. For any increase above the original 990 miles the railroad return was to be 42 per cent of the gross express revenues, minimum $80 per mile per annum. The execution of this contract on behalf of the C., H. & D. by Eugene Zimmerman was entirely without the authority of that company, neither the board nor the executive committee having previously given him or any other officer or agent such authority.

At this time the express privileges on the Pere Marquette were held by the American Express Company; those on the Chicago, Cincinnati & Louisville by the Pacific Express Company. When, therefore, the United States Express Company subscribed to the syndicate agreement, and on July 5, 1904, paid the call of 30 per cent on its subscription, it knew full well the extent of its expectations under the contract of June 27, 1904. Its primary reward would be the eventual acquisition of the express privileges on the Pere Marquette and the Chicago, Cincinnati & Louisville. Not only did it stand to gain new mileage; it protected its business on the C., H. & D., as the officials of the latter, who were also members of the syndicate, made it clear at the beginning that it was desired to have but one express company operating over all their roads. These together constituted the inducing motive back of the subscription of $625,000.

When the syndicate agreement was signed it was understood that the American Express contract on the Pere Marquette expired July 31, 1905. This, however, proved to be an error, and it was not until November 1 of that year that the business was surrendered to the United States Express Company. In the meantime, the Erie Rail-

road Company had gained control of the C., H. & D.-Pere Marquette combination. That fact gives considerable significance to a supplementing of the contract of June 27, 1904, by an agreement dated October 28, 1905, whereby the railroad's compensation was increased from 40 to 45 per cent, in the case of the C., H. & D. system proper, and from 42 to 45 per cent in the case of the other railroads acquired, including, of course, mainly the Pere Marquette. From the record it would appear that this concession was gained through the announced threat of the Erie management to install Wells Fargo service on the Pere Marquette and to require the diversion of as much C., H. & D. tonnage to Erie rails as possible. These contracts were in effect on the C., H. & D. until July 1, 1914, when the Wells Fargo succeeded to the business.

Henry F. Shoemaker, prominent under the preceding management, and also a director on the new board, was present at this meeting of July 7, 1904, and except where he refrained entirely from voting on the propositions presented, invariably voted "no."

The new board, in addition to carrying out the syndicate pledges, were mindful in other ways of syndicate interests. Thus change was made in the New York depository of the C., H. & D. Prior to July 7, 1904, the North American Trust Company had held that position. The directors in their meeting of that day, Henry F. Shoemaker again voting "no," designated the United States Mortgage & Trust Company as such depository thereafter, and directed the transfer of the company's funds accordingly. At this time the United States Mortgage & Trust Company, as previously stated, was acting as depositary of the C., H. & D. syndicate funds, and had negotiated loans to that syndicate aggregating $2,775,000 at 5 per cent with a 3 per cent commission. Shoemaker was a director in the North American Trust Company.

The personal interests of syndicate members were again recognized at the directors' meeting in New York on July 8, 1904, when King & Tracy, a law firm of Toledo, Ohio, were "appointed counsel to this company, to do and perform such service as may be required of them by the board or its officers." Thomas H. Tracy was then a director of the C., H. & D., elected on the preceding day, and with his partner, Harry E. King, had a financial interest in the terminal company and the construction company, Tracy being the leading spirit in both companies, as stated elsewhere. On account of the latter connection both were deeply interested in the syndicate, in which Tracy had been very active. Subsequently, on October 19, 1904, President Zimmerman announced to the board that he had appointed Tracy to be general counsel of the company.

IV. ZIMMERMAN-HOLLINS CONTROL, 1904–1905.

1. *Acquisition of control through retirement of 5 per cent preferred stock.*—The syndicate had scarcely secured control and carried through its more important plans when it met with the vigorous opposition of certain 5 per cent preferred stockholders, who protested against the Pere Marquette, the Chicago, Cincinnati & Louisville, and collateral transactions. These stockholders were represented by a committee consisting of Edward L. Heinsheimer, Joseph S. Graydon, George B. Cox, and Lawrence Maxwell, jr. The latter, who acted as counsel for the committee, was then general counsel and a director of the C., H. & D., and was himself the owner of 1,200 preferred shares. Claim was made that those transactions were *ultra vires* and fraudulent, and the complainants threatened litigation to have the purchases rescinded unless the preferred stockholders were bought out at $110 per share. Whether or not this well-timed opposition was a part of the plans of any or all of the promoters is not disclosed by the record before us. Certain it is that such opposition was to be anticipated when the preferred stockholders, who were not among the "insiders," learned of the burdens placed on their road by the common-stock syndicate.

The management of the syndicate yielded to the demands of the protesting stockholders and agreed to buy their stock at $110, it being also agreed that all other holders of the 5 per cent preferred should be admitted to the settlement on the same terms. An effort was made to raise the necessary funds within the syndicate, but without success. Finally Joseph Auerbach, of the law firm of Davies, Stone & Auerbach, attorneys for the United States Mortgage & Trust Company, suggested that he might be able to make the necessary arrangements with the banking firm of H. B. Hollins & Company, of New York, composed of Harry B. Hollins, Bernard J. Burke, and Rafael R. Govin. Such arrangements were made in August, 1904, but under their terms the Hollins firm gained control of the common-stock syndicate, and consequently of the two carriers. Such a surrender of control by the common-stock interests shows the strength of the claims of the preferred stockholders, but it should again be stated that the syndicate subscribers had been called upon for only 30 per cent of their subscriptions up to that time, and by the arrangements with the bankers those whose interests passed to the latter were to be repaid such subscription payments with interest. Then, too, the benefits pledged to the subscribers in order to induce them to subscribe were evidently allowed to accrue to them, for the arrangements with Hollins & Company specifically secured

to those subscribers the approval of those benefits at the coming stockholders' meeting, and there is no evidence that any further effort was made to interfere with the consummation of those transactions. Lawrence Maxwell, jr., later voted as a director in favor of the retirement of the preferred stock, continued as general counsel until October 1, 1904, and had charge of general litigation matters of the C., H. & D. up to December 31, 1904, receiving regular compensation for his services. He was a director until October 10, 1905.

The burden of buying in the 5 per cent preferred stock was placed on the C., H. & D. in the form of a purchase for redemption. The formal action taken by the company and its arrangements with the Hollins firm for financing the retirement were as follows:

At a meeting of the C., H. & D. board on August 11, 1904, under a preamble reciting the protest of the 5 per cent preferred stockholders, this resolution was adopted:

> In the interest of the corporation and of all classes of its stockholders it is desirable that the 5 per cent preferred stock of this company be extinguished.

The directors then voted it to be the sense of the board that such stock should be extinguished and redeemed and to that end authorized the president to appoint a committee with power to close, on behalf of the corporation, the arrangements necessary to carry the preceding resolution into effect. The committee consisted of Cumming, Palmer, and Tracy, with president Zimmerman ex officio.

Note should here be taken of the fact before stated that a portion of this preferred stock represented part of the water poured into the capitalization in the 1895 consolidation by which the C., H. & D. was formed.

To effect this retirement the company on August 16, 1904, entered into an agreement with H. B. Hollins & Company and a trust agreement with the Central Trust Company of New York and others. These agreements were approved by the board on August 17 and by the stockholders on October 19, 1904. At the meeting on August 17 the board also authorized the payment of $100,000 in cash to H. B. Hollins & Company on the execution of the contract with them. This had been paid on August 16, 1904.

The Hollins agreement contained as a part thereof an agreement of the same date between that firm and P. J. Goodhart & Company, brokers, of Cincinnati, acting for themselves and other holders of C., H. & D. 5 per cent preferred stock, whereby the sale to Hollins & Company of 12,000 shares of such stock was agreed upon at $110 per share, cash, payable on demand on August 30, or on any day thereafter up to September 30, 1904. The purchaser also agreed to accept between those dates and on the same terms any other shares of that stock offered by the Goodhart firm, and further agreed not to

purchase any preferred stock prior to October 1, except from that firm. By the contract with the C., H. & D., Hollins & Company agreed to purchase all the 5 per cent preferred stock offered under the terms of the Goodhart agreement, and were permitted, for one year after September 30, 1904, to buy any other shares of said stock, all of the stock purchased to be held and disposed of according to the terms of the agreement with the C., H. & D. The Hollins firm agreed to buy, between September 30 and December 1, 1904, any of said stock which the C., H. & D. might request them to buy, provided it could be acquired at a price not more than par. As each 100 shares of the stock were purchased, certificates therefor were to be delivered to the Central Trust Company of New York for account of the C., H. & D., and such stock was forthwith to be transferred to such parties as Hollins & Company should designate, indorsed in blank by such parties, and redelivered to Hollins & Company or their nominees, having first been indorsed to the effect that it was subject to redemption by the C., H. & D. on or before August 30, 1905, in accordance with the aforementioned trust agreement. The C., H. & D. agreed that simultaneously with this delivery of the indorsed stock to Hollins & Company it would also deliver its "obligations" to be issued under the trust agreement, which "obligations" would provide for the payment by the C., H. & D. of certain amounts as follows: For every 100 shares of the preferred stock purchased under the Goodhart agreement the C., H. & D. would pay on or before August 30, 1905, $11,000 with interest at 5 per cent per annum from the date of such purchase, plus $1,200 without interest, or, in other words, a price of $122 per share, with interest as stated. For every 100 shares purchased after the expiration of the Goodhart agreement, the C., H. & D. would pay the actual amount paid therefor by Hollins & Company, but not exceeding $11,000, with interest at 5 per cent per annum from the date of purchase, plus $1,200 without interest.

The trust agreement of August 16, 1904, with the Central Trust Company, as amended by a supplemental agreement, dated August 26, 1904, embodied as a part thereof the contract between the C., H. & D. and Hollins & Company, and provided for the issuance of the "obligations" on the basis described, and for securing the same by the pledge of 1,290 of the first and refunding mortgage bonds of the Cincinnati, Indianapolis & Western Railway Company, a C., H. & D. subsidiary, and 7,500 shares of the stock of the Southwestern Construction Company, in addition to the preferred stock itself. The preferred stock certificates were to be attached to the obligations and stamped as redeemable by the company on or before August 30, 1905. In case of default these certificates were to be sold and the proceeds applied to the satisfaction of any balance of debt which

could not be met from the proceeds of the sale of the collateral pledged under the agreement, the C., H. & D. to be liable for any further deficiency.

President Zimmerman delivered to the Central Trust Company of New York the C., H. & D.'s note for $8,449,110, dated August 19, 1904, under terms stated in his letter of transmittal. Therein the note was referred to as representing the aggregate obligation of the C., H. & D. to the trust company and to H. B. Hollins & Company under the agreements, and it was to be canceled upon the delivery of the "obligations" to be issued under the terms of the said agreements. At the meeting on August 27, 1904, the president reported the delivery of this note, and also the delivery to H. B. Hollins & Company of $912,000 in par of the bonds of the Cincinnati, Indianapolis & Western and 7,500 shares of the stock of the Southwestern Construction Company, and his acts were approved. The liability for this note of $8,449,110 was not entered on the books of the company, however, until January, 1905, when the accounts for November, 1904, were closed. This note was not canceled when the "obligations" were issued, but was held by the Central Trust Company of New York with sundry other collateral until finally canceled under the terms of an agreement of June 10, 1910, following a readjustment of the C., H. & D.'s finances.

As a part of the arrangements whereby Hollins & Company undertook to finance the retirement of this 5 per cent preferred stock they contemporaneously, in August, 1904, acquired options on interests in the C., H. & D. common-stock syndicate whereby they were enabled to assume at once the complete control of the C., H. & D. and of the Pere Marquette. This change of control was as radical and complete as that which occurred on July 7, and should be held in mind in considering subsequent events. The surrender of control by the syndicate and the assumption thereof by the Hollins firm were not consummated without safeguarding the previous acts of the old management and assuring for the new all necessary corporate action on the proposed retirement of stock. This was evidenced by the two following documents:

To Eugene Zimmerman, the Toledo Railway and Terminal Company, and other holders of the common stock of The Cincinnati, Hamilton and Dayton Railway Company.

GENTLEMEN: The undersigned, in consideration of the call upon the common stock of The Cincinnati, Hamilton and Dayton Railway Company this day given to us by yourselves, hereby agree that any and all preferred stock of The Cincinnati, Hamilton and Dayton Railway Company purchased by or through us, as well as any and all common stock of said company purchased by or through us, may be voted in favor of approving any and all action heretofore

taken by the board of directors of said company at the meeting held on July 7, 1904, or any subsequent meeting to date; also to vote said stock in favor of all corporate action necessary to redeem and retire or reduce the preferred capital stock of said railway company for said purpose, or for increasing the capital stock of said company for such purpose.

Dated, New York, August 16, 1904.

Yours, respectfully,

(Signed) H. B. HOLLINS & Co.

We, the undersigned, representing owners of common stock of The Cincinnati, Hamilton & Dayton Railway Company to the amount set opposite our respective signatures, hereby approve of the annexed agreements between The Cincinnati, Hamilton and Dayton Railway Company and Messrs. H. B. Hollins & Company, and the trust agreement between The Cincinnati, Hamilton and Dayton Railway Company and The Central Trust Company of New York, and we agree each with the other that we will vote all of said stock owned or controlled by us in favor of the redemption of the 5 per cent preferred stock of said company, or in favor of the reduction of the capital stock of said company for the purpose of retiring said preferred stock and for the purpose of issuing such new preferred stock or such securities as may be necessary in order to provide the funds necessary to retire, pay for, or redeem said 5 per cent preferred stock.

Dated, New York, August 16, 1904.

Name	Address	Number of Shares
The Toledo Railway & Terminal Company, Toledo		
By Thos. H. Tracy, Vice-President,		6,500
Rudolph Kleybolte & Co.	Cincinnati, O.	2,000
E. Zimmerman,	"	14,000
F. H. Prince,		7,000 Shs.
Mark T. Cox,		5,000 Shs.
Lawrence Slade,		
By G. M. Cumming, his proxy,		33,000 Shares
Charles L. Young,		
By G. M. Cumming, his proxy,		32,000 Shares

The last two signatures represented the 65,000 shares of syndicated stock which included that of the other signers.

Hollins's assumption of control was not immediately followed by a reorganization of the directorate. The first changes occurred on October 10 and 11, 1904, when James N. Wallace, A. Turnbull, A. Skitt, and C. A. Otis, jr., were elected directors, replacing M. D. Woodford, Jas. Phillips, jr., Eben Richards, and B. W. Palmer. James N. Wallace was then fourth vice president of the Central Trust Company of New York, the institution named as trustee under the trust agreement of August 16, 1904, and which thenceforth throughout the Hollins régime was the favored institution in the

handling of C., H. & D.-Pere Marquette finances. The record shows that Turnbull and Otis were the nominees of the United States Mortgage & Trust Company and that their places and that of George M. Cumming on the C., H. & D. board were to be vacated as soon as the loans negotiated by the trust company for the common-stock syndicate were paid. Meanwhile the resignations of the three were to be held for such purpose by H. B. Hollins & Company. On March 6, 1905, F. L. Eldridge and R. N. Young were elected to succeed H. F. Shoemaker and R. Kleybolte. On June 1, 1905, G. M. Cumming resigned on account of his election as a Hollins representative on the board of a rival road, the Detroit, Toledo & Ironton, and W. L. Dechant took his place on the C., H. & D. board.

The Hollins firm, by action of the board on August 27, 1904, had themselves appointed fiscal agents of the C., H. & D. They subsequently assumed like agency for the Pere Marquette. The C., H. & D. board on December 7, 1904, made them transfer agents of the company in New York, at the same time appointing the Central Trust Company of New York as registrar of the stock.

2. *Five per cent preferred stock syndicate.*—The acquisition of this 5 per cent preferred stock from the public and the raising of funds for that purpose was accomplished through a new syndicate, Hollins & Company being syndicate manager, and the Central Trust Company of New York acting as depositary. It was formed under an agreement of August 16, 1904. The subscriptions to this syndicate aggregated $7,618,050, which amount was based upon the total number of shares of this stock outstanding, 69,255, at $110 per share, the price which Hollins & Company was under contract to pay to P. J. Goodhart & Company. Calls on these subscriptions required full payment by September 29, 1904, and all were paid promptly except those of Eugene Zimmerman, president, director, and member of the executive committee of the C., H. & D., on his subscription for $400,000, and of H. B. Hollins & Company on their subscription for $833,050. Of these two subscriptions, Zimmerman's was not paid in full until November 18, 1904, and nothing was paid on Hollins's account prior to March 10, 1905, when $500,000 is recorded as having been paid in. This latter was so near the time of the general distribution of syndicate profits that the payment was received back with accumulated profits almost as soon as made.

The operations of this syndicate extended up into November, 1905, on the 17th of which month orders were issued by the new Erie management in the C., H. & D. to Hollins & Company and to the Central Trust Company that no more shares should be purchased.

This forestalled the effect of action previously taken by the Hollins management to prolong the period in which to secure the remaining shares outstanding, said action having been through vote of the C., H. & D. board on September 6, 1905, approving a contract which provided for the extension of the original arrangements for one year from August 16, 1905. This vote and the stockholders' confirmation thereof on October 10 were subsequent to the Erie's agreement to purchase control.

A summary of the receipts and disbursements of the syndicate follows:

Total amount paid in on subscriptions	$7,350,000.00
Disbursed as follows:	
39,879¼ shares purchased at $110	4,386,717.50
26,890 shares purchased at $108	2,904,120.00
Additional payment of $2 per share on 26,223 shares	52,446.00
Payment of interest on overdrafts	25.02
Payment of express charges	42.75
Payment of exchange charges	1,642.50
Total disbursements	7,344,993.77
Leaving a credit balance of	5,006.23

Strangely enough, this balance at the time of the hearing, May 26, 1916, still remained on deposit with the Central Trust Company to the credit of the syndicate.

The C., H. & D. did not pay at one time for all of the shares thus acquired. It derived the funds therefor from part of the proceeds of a new $15,000,000 3½-year 4½ per cent collateral trust note issue dated March 1, 1905, to be later described. From these funds a general distribution of principal, interest, and profits was made to the syndicate subscribers during the period March 23 to April 14, 1905, the bulk of the payments being made on March 29. All of the subscribers were then paid off in full except Hollins & Company, whose subscription of $833,050 had then been paid only to the extent of $500,000. Each subscriber received an amount equivalent to the amount paid in on his subscription, plus interest thereon at 5 per cent from September 10, 1904, and plus profits of $12 per share for every share represented at 110 by his paid-up subscription. A fact of importance in this connection is that by this settlement the funds of the C., H. & D. were disbursed on the basis of a purchase of 66,227 shares of stock, whereas the syndicate up to that time had acquired only 65,103¼ shares and did not acquire the bulk of the shortage until November 15 following. In all, the C., H. & D. acquired 66,769¼ shares through the syndicate, paying therefor

$8,347,410.81, which was distributed to the syndicate subscribers as shown by the following statement:

Subscriber	Amount subscribed.	Payments to subscribers.	
		Date.	Amount.
		1905.	
Hanover National Bank	$250,000	Mar. 29	$284,181.65
Trust Co. of America	250,000	Mar. 29	284,181.65
Central Trust Co. of New York	300,000	Mar. 29	341,017.98
Do		Apr. 10	56,836.33
Maxwell & Scoville	100,000	Mar. 29	113,672.66
Redmond & Co	250,000	Mar. 29	284,181.65
Kinnicutt & Potter	100,000	Mar. 29	113,672.66
H. B. Hollins, attorney	100,000	Mar. 29	[1] 113,672.66
Mrs. B. O. Edey	25,000	Mar. 29	28,418.16
Van Norden Trust Co	50,000	Mar. 29	56,836.33
Rudolph Kleybolte & Co	1,600,000	Mar. 23	1,756,089.00
Do		Mar. 27	174,928.18
J. & W. Seligman & Co	300,000	Mar. 29	341,017.98
Landenburg, Thalmann & Co	1,000,000	Mar. 29	1,136,726.61
Peoples Bank & Trust Co	15,000	Mar. 29	17,050.89
Kessler & Co	100,000	Mar. 29	113,672.66
Strong, Sturgis & Co	200,000	Mar 29	227,345.32
William Salomon & Co	250,000	Mar. 29	227,345.32
Do		Mar. 31	28,418.16
Do		Apr. 14	28,418.16
Hartshorne, Bogert & Battelle	25,000	Mar. 29	28,418.16
Percival Farquhar	50,000	Mar. 29	56,836.33
Plympton, Gardiner & Co	100,000	Mar. 29	113,672.66
F. de Zaldo	20,000	Mar. 29	22,734.53
Eugene Zimmerman	400,000	Mar. 29	454,690.62
Mercantile Trust & Deposit Co. of Baltimore	50,000	Mar. 29	56,836.33
Lehman Bros	100,000	Mar. 29	113,672.66
Charles H. De Witt & Co	20,000	Mar. 29	22,734.53
F. P. Olcott	100,000	Mar. 27	113,645.39
Gonzalo de Quesada	20,000	Mar. 29	22,734.53
J. M. Cummings	10,000	Mar. 29	11,367.26
James H. Eckels	200,000	Apr. 1	227,345.32
Kean, Van Cortlandt & Co	50,000	Mar. 29	113,672.66
Robert Winthrop & Co	500,000	Mar. 29	284,181.64
Boissevain & Co	50,000		
Westfield Trust Co	10,000	Mar. 29	11,367.26
G. de Zaldo	10,000	Mar. 29	11,367.26
Henry P. Booth	10,000	Apr. 8	11,367.26
Hannah Heyward	10,000	Mar. 29	11,367.26
Estate of F. A. Otis	10,000	Mar. 29	11,367.26
James Campbell	100,000	Apr. 8	113,672.66
Emerson McMillan	50,000	Mar. 29	56,836.33
H. B. Hollins & Co	[2] 833,050	Mar. 29	568,363.30
Do		Nov. 16	55,298.94
Do		Nov. 27	12,504.00
Post & Flagg	(3)	Mar. 29	56,836.32
United States Mortgage & Trust Co	(3)	Mar. 29	56,836.33
Totals	7,618,050		8,347,410.81

[1] Paid to H. B. Hollins & Co.
[2] $565,000 paid in on this subscription.
[3] Account does not show from which original subscribing interests these were transferred nor the amounts thereof. Presumably each interest was $50,000.

With reference to the foregoing table it will be noted that several changes occurred in the list of subscribers and in the amounts of subscriptions. The name of the subscriber does not necessarily disclose the real beneficial interest.

Before proceeding with the facts as to the source from which the C., H. & D. derived the funds to accomplish the retirement of this preferred stock there are a number of matters connected with this retirement which should be considered. The first is that at the meeting of the C., H. & D. stockholders on October 19, 1904, at which the

board's action in voting the retirement of the 5 per cent preferred stock was ratified, the preferred stock which had been acquired by the syndicate to the extent of 47,671 shares was itself voted in favor of the ratification and in favor of the corporate acts necessary to carry through the entire transaction.

Along this same line it is of interest and importance to note certain facts with reference to the directors' vote in favor of the retirement. The record shows that 453 shares of the stock stood in the name of Eugene Zimmerman at the time he, as a director, voted in favor of the retirement, and that certificates for 701 additional shares were issued in his name less than two weeks thereafter. Rudolph Kleybolte, another director so voting, had purchased 10,000 shares of said stock from the C., H. & D. common-stock syndicate at $100 per share. Zimmerman, as shown above, was a subscriber for $400,000 in the preferred stock syndicate, and Rudolph Kleybolte & Company for $1,600,000. G. M. Cumming, who also voted for the retirement, represented on the C., H. & D. board the United States Mortgage & Trust Company, which company later received the principal, interest, and profits on a $50,000 subscription in the syndicate. Lawrence Maxwell, jr., a director, also voted in favor of the retirement. At that time 1,200 shares of that stock stood in his name on the company's books. The record before us does not show that he had any interest in the syndicate. He was, however, general counsel of the company up to October 1, 1904, and had charge of legal matters up to December 31, 1904, receiving regular compensation for such services. A printed circular letter dated August 17, 1904, Appendix 14, and addressed to the 5 per cent preferred stockholders by the committee previously described, and for which he acted as counsel, invited the stockholders to take advantage of the terms negotiated by the committee by depositing their stock with P. J. Goodhart & Company, of Cincinnati, Ohio, and receiving therefor $110 per share in cash less $2 per share for the committee's expense and services. In that circular he personally recommended to these stockholders that they avail themselves of the settlement negotiated by the committee, and the circular concluded with the following significant intimation:

> Preferred stockholders who do not deposit their stock before the expiration of the time limited in the foregoing arrangement, must be prepared to meet the claim of the railway company that their stock is redeemable at par.

At the date of this circular the C., H. & D. had already entered into the above-described agreements for retiring its stock, not at par, but at 122 and interest, a fact well known to him, for he had been a party in the negotiations and had voted in favor of said retirement as a director of the company. It must be presumed, moreover, that

his fee as counsel for the preferred stockholders' committee would be one of the expenses of that committee, to be provided for out of the deduction of $2 per share from the price of $110.

It appears that the syndicate acquired 26,890 shares at $108 per share, but $2 per share additional was paid separately on 26,223 of those shares. In explanation of these separate disbursements the Central Trust Company produced written authority from H. B. Hollins & Company to pay $2 per share to P. J. Goodhart & Company on 12,352 shares delivered for their account by Rudolph Kleybolte & Company and to pay the same rate to the Hollins firm on 9,792 shares stated to have been paid by that firm to—

	Shares.
E. Zimmerman on	2,088
M. L. Sternberger on	3,162
Feder, Holzman & Co. on	1,956
Rush Taggart on	816
J. B. Foraker on	1,550
D. G. Edwards on	200
John C. Bruce on	20

Specific authority for the payment at the same rate to H. B. Hollins & Company on the remaining 4,079 shares could not be produced. As previously stated, the Hollins firm was under contract to pay $110 on stock acquired from P. J. Goodhart & Company. Whether or not the deposit of 12,352 shares by another firm for the account of the latter could be construed as a sale is not clear, but other transactions of this period raise some doubt as to the legitimacy of the payments of $2 per share on most if not all of the 26,223 shares. No question exists but that the syndicate paid only a price of $108 for 667 shares.

This was significant, for a provision in article first of the trust agreement between the C., H. & D. and the Central Trust Company was to the effect that the "obligations" issued thereunder should be in the amounts provided in the contract between the C., H. & D. and H. B. Hollins & Company, and in section IV the latter contract provided that the railway company should pay "the amount actually paid by the bankers" for shares purchased by the latter after the expiration of the contract with P. J. Goodhart & Company, September 30, 1904. All of the 667 shares purchased at 108 and 13,857 shares of those on which the additional $2 was paid were acquired by the syndicate after the specified date. When the Central Trust Company issued the "obligations" it made them call for the payment of $110 per share for all the stock acquired. Whether or not it had any other authority is not of record, but this record does contain a letter from H. B. Hollins & Company which requests that

the "obligation" be so issued "to avoid possible confusion." The letter concludes as follows:

> The saving to the company by the purchase of stock at a price less than that price will be adjusted by the balance remaining after the purchase of all the stock, of the money not used in such purchase.

This letter was dated December 2, 1904, previous to which date, however, at least $7,405,400 of "obligations," out of the $8,145,818, had already been issued. The trust company had knowledge that certain of this stock had been acquired below $110 per share, and therefore seemingly failed in its trust duty.

The Central Trust Company may also be justly criticized for collecting from the C., H. & D. fees for services rendered to the preferred stock syndicate. Part of a fee of $20,000 paid by the railroad was for "receiving subscriptions to syndicate and issuing participant syndicate receipts therefor." This accounts for the absence of any such payments from the expenses of the syndicate.

The basis of distribution of the syndicate's funds worked an advantage in favor of Zimmerman and Hollins & Company. Their payments on their subscriptions had not been promptly made and therefore they were not entitled to receive interest on the same basis as the other subscribers, but under the distribution as made, they did. This was particularly flagrant in the case of the Hollins firm, for they made no payment whatever on their subscription till 19 days before the general distribution, and therefore profited unfairly to the extent of about $12,500.

When the retirement of the 5 per cent preferred stock was undertaken, the C., H. & D. owned 83 shares, having held the same in its treasury since the consolidation of 1895. President Zimmerman directed the sale of those 83 shares to Hollins & Company at the price of $110 per share. Under the contracts already described the C., H. & D. was obligated to buy them back at $122 per share and interest. Zimmerman had a $400,000 interest in the syndicate which received the profits on these 83 shares.

Of a piece with the foregoing is another transaction which is disclosed by the correspondence files of president Zimmerman. These show that in February, 1905, the board had failed to declare the regular dividend on the preferred stock. H. B. Hollins suggested to Zimmerman that the board be reconvened and the dividend declared, as otherwise the company's credit would be adversely affected. This suggestion president Zimmerman parried by advising Hollins & Company that the executive committee in New York could declare the dividend, and suggesting that Hollins & Company "please instruct Mr. Cumming." He did not agree that the company's credit

would be thus affected and stated further, "I do not think we will be able to get the balance of the stock in if we make this dividend." This would seem to indicate a further pressure on the preferred stockholders to induce them to sell their holdings to the Hollins syndicate and thereby add $12 per share to its profits. However, three days later the executive committee authorized payment of the usual quarterly dividend on the 5 per cent stock, although the by-laws provided that "dividends may be declared by the board whenever in their judgment the net earnings of the company shall warrant the same."

3. *Collateral trust note syndicate.*—The C., H. & D. secured the cash to pay its obligations on account of the 5 per cent preferred stock retirement from the sale of its 4½ per cent 3½-year collateral trust notes issued under an agreement dated March 1, 1905, with the Central Trust Company, as trustee. This indenture provided that there should be deposited as collateral $15,000,000, par value of C., H. & D. consolidated mortgage 4½ per cent 50-year bonds, a new issue dated January 2, 1905, and also preferred stock and "obligations" relating thereto which should be acquired with proceeds of the notes. In case the trust agreement of August 16, 1904, terminated during the life of the notes, all securities deposited thereunder were to be deposited under this indenture of March 1, 1905. This was in the midst of the Hollins régime. The issuance of the notes was authorized by the board on March 6, 1905, at which meeting authority was also voted the Hollins firm as fiscal agents of the company to sell the entire issue of $15,000,000 in par at 92½ and to pay themselves 2½ per cent on the par thereof as a commission, "it being understood also that they may participate in the purchase of such notes."

The trust agreement provided that $9,388,000 in par should be issued immediately and only for the purchase of the 5 per cent preferred stock and the obligations issued in connection therewith under the trust agreement of August 16, 1904. This amount evidently represented the number of bonds which it was estimated would be required to purchase the shares then owned by the syndicate or likely to be acquired by it. At a meeting on March 9, 1905, the board authorized the use, under the direction of the executive committee, of the proceeds from the remaining $5,612,000 for the retirement of the $5,500,000 of purchase money gold notes issued under the indenture of July 6, 1904, to pay $50 of the $125 per share paid for the 110,000 shares of Pere Marquette stock. The executive committee on the same day authorized the Central Trust Company of New York to acquire on behalf of the company all the preferred stock "obligations" at par and accrued interest and the $5,500,000 of purchase money notes at 90½.

On March 17 the executive committee directed the Central Trust Company to deliver $5,612,000 of the new collateral trust notes to or upon the order of H. B. Hollins & Company and the remaining portion of that issue, $9,388,000, to or upon the order of that firm upon the receipt in cash of 90 per cent of their par value. These acts of the board and executive committee were approved by the stockholders on October 10, 1905, by a blanket vote. The accounts and records of the C., H. & D. merely show that these $15,000,000 of collateral trust notes were sold at 90 and interest and the proceeds applied as aforesaid, but there is very much more to these transactions than is revealed by the carrier's books.

Besides voting to themselves the aforementioned commission of 2½ per cent on $15,000,000, or $375,000, H. B. Hollins & Company, together with certain officers and directors of the C., H. & D., received large profits from the operation of a syndicate formed to underwrite these $15,000,000 of notes. Its operations were conducted under the provisions of an agreement dated March 8, 1905, to which the C., H. & D. was a party, and whereby it bound itself to deliver the $15,000,000 of notes to the syndicate at 92½ and interest, the Central Trust Company of New York being syndicate manager. The trust company could not produce the original agreements, so that it is not possible to determine who executed it on behalf of the C., H. & D. Formal action on the agreement was not taken by the board or executive committee.

It is evident that this collateral trust note syndicate was formed and the disposition of the notes arranged for before their issue was formally voted by the C., H. & D. board, as before recited. Notices of allotments of subscriptions were sent out by the manager on March 9, 1905, and the executed subscription agreements were received from the subscribers on March 10, 1905. On that day the selling agents, Redmond & Company, a New York bond house, reported that their sales had aggregated $4,655,000, exclusive of $2,640,000 of notes withdrawn from the syndicate under the section of the agreement granting that privilege. On March 11 additional sales were reported, bringing the aggregate to $9,350,000, which, counting withdrawals, left only $8,010,000 out of the $15,000,000 then to be disposed of. The syndicate subscribers were never called upon to pay and never did pay one penny on their subscriptions.

The notes as sold by Redmond & Company brought 98 and interest for $15,000 and 97¼ and interest for $12,345,000, all having been turned over to them at 97¼ and interest. The difference between the latter price and the 90 and interest received by the C., H. & D. was divided as follows: 4¼ per cent on $12,360,000 was credited to the syndicate; 2¼ per cent on $15,000,000 was credited to H. B. Hol-

lins & Company, fiscal agents; and one-half of 1 per cent on $14,800,000 to the Central Trust Company.

In the table below are shown the subscriptions and subscribers' profits in the operation of this collateral trust note syndicate. The withdrawals of notes, aggregating $2,640,000, have to be allowed for, because the syndicate received no profits thereon. The Central Trust Company did not receive its one-half of 1 per cent on the $200,000 of notes withdrawn by F. P. Olcott, then its president.

Subscriber.	Amount subscribed.	Profits on subscription.
H. B. Hollins & Co.	[1] $2,250,000	$68,000
Hanover National Bank	450,000	18,000
Trust Co. of America	100,000	4,000
Kinnicutt & Potter	100,000	4,000
J. & W. Seligman & Co	300,000	12,000
William Salomon & Co.	250,000	10,000
Geo. W. Young	100,000	4,000
Lehman Bros.	100,000	4,000
Strong, Sturgis & Co.	200,000	8,000
Eugene Zimmerman	1,000,000	40,000
United States Mortgage & Trust Co.	1,500,000	60,000
Landenburg, Thalmann & Co.	[2] 1,000,000	.....
Redmond & Co.	1,200,000	48,000
Hallgarten & Co.	[3] 1,500,000	82,400
Rudolph Kleybolte & Co.	1,900,000	76,000
F. P. Olcott	[2] 200,000	.....
Hudson Trust Co.	100,000	4,000
Mechanics & Farmers Bank	100,000	4,000
Bank of America	[2] 100,000	.....
A. H. Joline	20,000	800
A. Rathbone	30,000	1,200
J. N. Wallace	75,000	3,000
C. G. Hedge	25,000	1,000
E. C. Henderson	25,000	1,000
Central Trust Co. of New York	[4] 2,250,000	70,000
Geo. Sherman	25,000	1,000
Hugh J. Grant	[2] 100,000	.....
Total	15,000,000	494,400

[1] $50,000 of notes withdrawn.
[2] Notes withdrawn equivalent to entire subscription.
[3] $690,000 of notes withdrawn.
[4] $500,000 of notes withdrawn.

The 4½ per cent on the $12,360,000 taken by the syndicate amounted to $525,300, of which $30,900, a one-fourth point, went to Redmond & Company as commission before the above distribution was made. Other profits taken by real insiders on this note issue were as follows:

Redmond & Company received $2,400 of commissions in addition to the $30,900 above mentioned and one-half point on the notes sold by them, which with subscription profits netted them $118,694.35, after paying agents' commissions and expenses.

The Central Trust Company received, in addition to its share of the syndicate profits, $70,000, its commission of one-half point on $14,800,000 less expenses, $70,324.65, and in addition $125,000 paid by H. B. Hollins & Company out of the latter's 2½ per cent commission, or a total profit of $265,324.65 over and above the profits on $500,000 of notes withdrawn and which at the current selling price probably netted an additional $25,000.

The Hollins firm received its $88,000 in syndicate profits and $375,000 as a 2½ per cent commission on $15,000,000 of notes less $125,000 handed the Central Trust Company for some unknown reason, or $338,000 in all, plus profits on $50,000 of notes withdrawn.

Here again certain directors of the C., H. & D. profited directly or indirectly at the expense of the carrier. These were Eugene Zimmerman, who received profits of $40,000 from the syndicate; Rudolph Kleybolte, whose firm received $76,000 of profits and $11,100 in commissions; G. M. Cumming, representing the United States Mortgage & Trust Company, which received $60,000 of profits; its president, Geo. W. Young, also receiving $4,000 of personal profits; and J. N. Wallace, who received $3,000 of personal profits, he being fourth vice president of the Central Trust Company, the profits of which have already been detailed.

To summarize the cost to the C., H. & D. of retiring its 5 per cent preferred stock, one must proceed as follows: The price paid per share, $110, plus 5 per cent interest and $12 bonus, together with commissions, trustee fees, and miscellaneous expenses, brings the actual money outlay to an average of over $126 per share. But giving consideration also to the discount of 10 per cent suffered on the notes issued to furnish the cash for the redemption of the stock, it appears that for every $100 share of stock retired the company issued 3½-year notes bearing fixed interest at 4½ per cent to a par value of over $140. The preferred stock thus retired did not bear guaranteed dividends of 5 per cent or of any fixed amount, but was entitled only to such share of the profits as the directors should elect to thus distribute. It had paid regular dividends of 5 per cent per annum since the organization of the company in 1895.

This 5 per cent preferred stock was not listed on the New York Stock Exchange, but on the Cincinnati Exchange. During the year preceding the assumption of control by the common-stock syndicate the highest "bid" quotation reported was 107¾, the lowest, 102, and the average of 39 reported bids, 105½. The highest of the few reported "asked" quotations was 108; the lowest, 103.

The actual cancellation of the stock did not occur for several years, it being held in the meantime by trustees under certain C., H. & D. agreements. It was finally canceled pursuant to the plan of readjustment of the road's finances adopted in 1909 in connection with the purchase of C., H. & D. control by the Baltimore & Ohio.

4. *Premature retirement of noninterest-bearing notes.*—The records of the C., H. & D. furnish no clue as to why five and one-half millions of noninterest-bearing obligations were retired a year and three months before maturity through the issuance of notes bearing fixed interest of 4½ per cent per annum and in the face of the fact that

the noninterest-bearing notes were subject to retirement at the option of the company by conversion into common stock. We refer here to the use of the proceeds of $5,612,000 of the collateral trust notes to retire $5,500,000 of purchase money notes which had been issued to pay $50 of the purchase price of $125 per share for the Pere Marquette common stock. These proceeds at 90 and interest amounted to $5,064,830, which was credited to the C., H. & D. on the books of the Central Trust Company on March 21, 1905. Those books show that this credit was used to the extent of $4,977,500 in the acquisition of the $5,500,000 of purchase money notes at 90½, the balance of $87,330 being later applied on a demand note of the C., H. & D. All but $50,000 of the notes purchased for retirement were turned in by H. B. Hollins & Company. The significance of this lies in the fact that this firm had bought in many such notes at substantially less than the price paid by the C., H. & D.; in fact, at about 85. The exact extent to which the Hollins firm had assembled the notes at that price and profited in their retirement at 90½ is not disclosed.

5. *Retirement of 4 per cent preferred stock.*—The C., H. & D. had outstanding with the public on June 30, 1904, $1,074,500 in par of its 4 per cent preferred stock, consisting of $612,100 of the "A" and "B" series and $462,400 of the "Eagle" series. These amounts represented the portions of preferred stocks issued by the original Cincinnati, Hamilton & Dayton *Railroad* Company which was not exchanged for new 5 per cent preferred in the consolidation of 1895. This stock had been adopted as its first preference stock by the new company, and, while it did not carry voting rights, dividends of 4 per cent per annum were guaranteed thereon.

On August 27, 1904, the directors authorized president Zimmerman to arrange with the fiscal agents, H. B. Hollins & Company, for the purchase of this stock for the account of the company. At that time the arrangement had already been consummated. At the same meeting there was read and ratified a letter dated August 26, 1904, addressed to the Hollins firm and signed on behalf of the road by president Zimmerman, and G. M. Cumming and Rudolph Kleybolte, directors, which embodied a memorandum of an understanding arrived at between the company and the fiscal agents whereby the latter during the 30 days following August 30, 1904, were to purchase this stock for the account of the company, at $100 per share flat, deducting, if possible, $1 per share to be paid the attorneys for the 4 per cent stockholders. Money advanced by the fiscal agents in so doing was to be repaid at the expiration of five months, later changed to four months, from August 30, 1904, with interest at 5 per cent per annum, and their commission was fixed at 2 per cent on the $1,074,500. The company's note, dated August 29, 1904, was issued to

Hollins & Company for this amount and was secured by 1,070 shares of stock of the Dayton Union Railway Company. It may be noted here that Hollins & Company were not made fiscal agents of the C., H. & D. until the 27th day of August, 1904, but had had dealings in that capacity before.

At a meeting on October 19, 1904, the stockholders ratified and approved the execution and delivery of the memorandum above described. Earlier on the same day the directors had authorized the substitution of this 4 per cent preferred stock in the place of Cincinnati, Indianapolis & Western Railway Company bonds pledged as security with the Central Trust Company of New York, as trustee under a C., H. & D. mortgage. The accounting department of the carrier was without official advice as to the issuance of the note of August 29, 1904, until the comptroller received the *paid* note from the president on December 3, 1904. This followed an advice to the company from Hollins & Company, December 1, 1904, which stated that 10,717 shares had been purchased to that date.

As was the case with the 5 per cent preferred stock, this 4 per cent stock was not fully and finally extinguished until 1909.

The retirement of this $1,074,500 of nonvoting stock cost the company par and $33,414.13 in cash, as follows:

Commission of 2 per cent on $1,074,500 paid H. B. Hollins & Company		$21,490.00
Interest at 5 per cent per annum paid H. B. Hollins & Company on note for $1,074,500, dated August 29, 1904	$12,983.55	
Less interest on amount realized from sale of C., I. & W. bonds	2,062.42	
		10,921.13
Services Hanover National Bank		1,000.00
Premium		3.00
Total		33,414.13

In addition to this cash loss, consideration must be given to the fact that in selling $1,162,000 par of Cincinnati, Indianapolis & Western bonds to acquire funds for the payment of the Hollins note, only $1,080,660 was realized. The C., H. & D.'s assets should accordingly have been scaled down $81,340. But that amount was charged to "construction C., I. & W. Ry.," and still remains among the recorded assets of the C., H. & D. in the general account "investments in affiliated companies—advances."

Further, since the C., H. & D. was paying the interest, 4 per cent, on the Cincinnati, Indianapolis & Western bonds in the hands of the public for the use of that company's property, the sale of $1,162,000 of those bonds to retire $1,074,500 of guaranteed 4 per cent

stock added a burden of 4 per cent per annum on $87,500 to the fixed charges of the C., H. & D.

6. *Prince's claim for additional commissions.*—It will be remembered that the C., H. & D. directors, during the meeting of July 7, 1904, contracted, as one of the considerations in the purchase through F. H. Prince & Company of the Pere Marquette stock, to pay that firm forthwith $250,000, in cash, as commissions. In the same contract the railroad also agreed to pay Prince & Company "such further reasonable compensation and commission as shall be agreed between the bankers and the committee appointed by the railway company." The meeting appointed as the committee president Zimmerman and directors G. M. Cumming and Eben Richards.

This committee reported on January 7, 1905, that it had caused $62,500 to be paid to Newman Erb on account of the commission due to F. H. Prince & Company. This was done by a loan arranged by Hollins & Company through the United States Mortgage & Trust Company, and went to Newman Erb personally by reason of his arrangement with Prince. The board approved this action.

In the *Bradford Case*, *supra*, Newman Erb testified that he received $62,500 from F. H. Prince & Company as compensation for his services in aiding in bringing the two properties together. Up to the meeting of the C., H. & D. board on July 7, 1904, Erb had been one of the most influential promoters of the C., H. & D. syndicate, but assurances that he should have representation on the new board were not fulfilled. On that account and because of his objections to the retirement of the preferred stock he demanded that his interests be bought out. An agreement to pay him a commission of $75,000 was part of the compromise effected with Prince & Company at that time. When this obligation came due, further disagreement arose, which finally resulted in his accepting $62,500 cash in settlement, that sum being placed to his credit with the United States Mortgage & Trust Company early in January, 1905. This coincidence of dates, amounts, and circumstances would indicate that Prince paid off his debt to Erb by having the amount voted to himself as a further payment of commissions.

Thereafter the matter of further commissions hung fire for several months, during which the committee underwent several changes in membership, until, on September 28, 1905, James Phillips, jr., was appointed to act with Cumming and Robison in settling the Prince claim. Later on that day this committee reported that Prince demanded $285,000 in full settlement, and the board then ordered that—

> this company offer to pay Prince & Company $200,000 in full settlement * * * and that upon the acceptance of this offer and upon Prince & Company furnishing a sworn statement or satisfactory evidence to H. B. Hollins & Company,

fiscal agents, that they had paid from commissions heretofore advanced to them a loss of about $90,000 upon the Toledo Railway & Terminal Company bonds, that this company pay said $200,000 to Prince & Company.

The loss of $90,000 referred to is understood to be the sum paid to the Toledo-St. Louis interests to make up the difference between the amounts paid them by Rudolph Kleybolte & Company for their terminal company bonds and the price of par guaranteed to them by Prince and Erb as part of the considerations given to secure their large subscription to the C., H. & D. common-stock syndicate.

It should also be observed that when this offer of settlement was subsequently reported by the president to the stockholders at the meeting of October 10, 1905, it was in language that contained no reference whatever to the condition of a proof of loss on terminal company bonds. The president's report stated that a final settlement at $200,000 had been made and accepted by Prince & Company, which action was approved by the stockholders. It is quite significant that final action of the board and stockholders in this matter was all subsequent to the sale of C., H. & D. control to J. P. Morgan & Company for the Erie, and just before the actual assumption of that control.

This payment of commissions to Prince & Company for alleged services was preposterous. On the carrier's record this firm had secured the right and option to offer for sale to the C., H. & D. 110,000 shares of Pere Marquette stock, had secured authority to offer a trackage contract with the terminal company, had secured the right to certain "privileges" for the acquisition of control of the Chicago, Cincinnati & Louisville, and had secured certain contracts for sale of the terminal company bonds to Rudolph Kleybolte & Company. This record, as already set forth, reveals that these matters were all a part of the promoters' general scheme.

Viewed from the angle of expectations, however, Prince's actual claims were really very modest. As shown in Appendix 10, it was a feature of the original plan of the promoters that $2,500,000 in cash was to be collected by the "bankers" in the Pere Marquette stock deal, as commissions, to inure to the benefit of the syndicate.

When the Erie management assumed control the new executive committee, on November 29, 1905, rescinded all previous action of the board or the executive committee authorizing the payment of the Prince claim. No further payment was made beyond the original $250,000 and the $62,500 which went to Erb, although suit was brought against the C., H. & D. to enforce payment of further large sums. This suit was lost, but the expense thereof to the C., H. & D. was $11,455.66.

7. *Michigan Securities Company.*—Early in 1905 the C., H. & D. management was confronted with the question of taxation under

Ohio laws of the company's holdings of capital stock of foreign corporations. These holdings then were as follows:

	Book value.
110,000 shares Pere Marquette common	$13, 750, 000. 00
71,158 shares Cincinnati, Indianapolis & Western common	2, 303, 252. 52
644 shares Dayton & Union common	33, 200. 00
7,501 shares Southwestern Construction Co	517, 020. 60
12,500 shares Cincinnati, Findlay & Fort Wayne common	1. 00
12,000 shares Ashland & Ironton Bridge Co	0
	16. 603, 474. 12

Thereafter, on April 6, 1905, the executive committee met, together with representative of counsel, and received from the Michigan Securities Company, by Samuel B. Lawrence, president, a proposal to purchase substantially whatever equity the C., H. & D. had in the above-named securities for the consideration of $20,000, a further consideration to be given when the shares of the Southwestern Construction Company should be freed from all encumbrance. This offer was accepted, and a form of agreement and conveyance was adopted and subsequently executed, the same bearing date April 6, 1905, and specifically conveying the following property, subject to the terms under which same was pledged:

110,000 shares Pere Marquette.
70,158 shares Cincinnati, Indianapolis & Western.
644 shares Dayton & Union.
7,500 shares Southwestern Construction Company.
12,496 shares Cincinnati, Findlay & Fort Wayne.
12,000 shares Ashland & Ironton Bridge Company.

Subsequently, by agreement dated August 31, 1905, the error of including only 70,158 instead of 71,158 shares of Cincinnati, Indianapolis & Western stock in the bill of sale was corrected.

The Michigan Securities Company was a New York corporation, apparently organized upon the advice of general counsel Thomas H. Tracy to president Zimmerman. Its entire capital stock issue of $20,000 was purchased by the C., H. & D. as a result of resolutions passed by the executive committee on April 27, 1905. When the fiscal year to June 30, 1905, was drawing to a close the accounting official of the railroad was in a quandary as to how he should adjust his books in view of the sale to the Michigan Securities Company for $20,000 of capital stocks for which the C., H. & D. carried asset accounts aggregating $16,603,474.12.

However, along in August, 1905, and then only after the question had been referred to the general solicitor and by him to New York counsel, the adjustment was accomplished by writing up $33,201, the amount paid for the stock of the Michigan Securities Company, in a new asset account, and carrying in another new asset account styled, "Liability interest in stocks owned by the Michigan Securi-

ties Company," the amount of $16,570,273.12. These together replaced the former asset accounts wherein were carried the stocks that had been sold.

In September, 1907, the comptroller who had faced the difficulty of adjusting these accounts in 1905, in a letter of explanation to receiver Judson Harmon, stated that "so far as accounting is concerned this is a very unusual transaction, and the whole matter was handled under instructions of H. B. Hollins & Company, and Davies, Stone & Auerbach, attorneys for the C., H. & D. at the time the entries were put on C., H. & D. books."

In connection with the discussion of the Ashland & Ironton Bridge Company, it is pertinent that on September 6, 1905, the board authorized amendment of the bill of sale to the Michigan Securities Company by striking therefrom all reference to the bridge company's stock. The date, September 6, is especially significant in view of the fact that Hollins & Company's interests in the C., H. & D. were sold to J. P. Morgan & Company on September 9, 1905.

In passing it may be noticed that none of the stocks sold were ever delivered to the securities company, and that eventually, when the control of the C., H. & D. had finally passed to the Baltimore & Ohio, that management on January 11, 1912, authorized the abrogation and rescission of the bill of sale and agreement bearing date of April 6, 1905. Simultaneously it was resolved that the Michigan Securities Company should be dissolved, and this was accomplished in the July following.

The apparent aim of this subterfuge was to escape the possible effect of an Ohio law, applicable to individuals, which required the payment of taxes by residents of Ohio on the stock, whether pledged or entirely free and unencumbered, of foreign corporations whose property, or an essential part thereof, is situated outside the state of Ohio.

8. *Guaranty of Pere Marquette bonds by C., H. & D. and syndicates dealing therein.*—During the Zimmerman-Hollins régime in 1904–5 the C., H. & D. indorsed its guaranty of both principal and interest on $9,207,000 of Pere Marquette refunding mortgage 4 per cent bonds dated January, 1905, due 1955. This bond issue was dictated by a need for funds on the part of the Pere Marquette, to meet maturing short term notes, equipment obligations, unpaid vouchers, etc., which developed before the Zimmerman-Hollins management had long been in control. Plans were made for this new Pere Marquette 50-year mortgage to provide for such needs and also to cover the refunding of underlying securities.

The first block of these new 4 per cent bonds, $6,000,000 in par value, was authorized by the Pere Marquette board on January 6, 1905, to be delivered to the company's treasurer and by him to H. B.

Hollins & Company in accordance with a contract made with that firm for the sale and purchase thereof. Nearly two months previous to this date action had been taken by the corporate authorities of the C., H. & D. and by the Hollins firm bearing upon the marketing of those securities.

At a meeting of the executive committee of the C., H. & D. on November 18, 1904, directors Cumming, Zimmerman, and Tracy being present, there was read a letter of that date from Hollins & Company to president Zimmerman which stated that pursuant to arrangements made with him the Hollins firm had bid in their own names for the said block of bonds at 87½ and interest, which bid had been accepted by letter from the Pere Marquette dated the 14th instant, transmitted therewith. That letter to the president also stated that although the bid had been made by the Hollins firm in its own name, it really had been made by them as fiscal agents of the C., H. & D. and they therefore requested the adoption of formal resolutions ratifying and adopting that purchase. The letter added that the fiscal agents had arranged a resale of the bonds at 87½ and interest, provided the C., H. & D. would guarantee the same as to principal and interest, and stated further:

> The price paid to the Pere Marquette Railroad Company was predicated upon a resale of the bonds guaranteed by your company, as above stated, and in the transaction the Pere Marquette Railroad Company will receive the full benefit of the entire pecuniary consideration; your company, as the owner of a very large amount of the stock of the Pere Marquette Railroad Company, and therefore vitally interested in its welfare, in addition to the other reasons we have discussed, receives a benefit, which, in our opinion, justifies you in guaranteeing the bonds as above suggested:

The committee voted to ratify, approve, and confirm said purchase on the terms named in the correspondence between the Pere Marquette and the Hollins firm as for and on account of the company. The committee also authorized (1) the indorsement of the company's guaranty of principal and interest on the $6,000,000 of bonds; (2) the sale of the indorsed bonds to Redmond & Company at the price named; and (3) the fiscal agents to enter into all contracts necessary to carry out such sale, their compensation for such services to be paid by Redmond & Company. This purchase, guaranty, and sale was ratified and confirmed by the stockholders on January 12 and by the board on January 18, 1905.

The records of the Central Trust Company of New York, trustee under this Pere Marquette mortgage, show that cash was received by it on January 27, 1905, covering the delivery of 201 bonds at 87½ and interest, and on January 30 covering 5,799 bonds at the same rate. Aside from this and the records as to the disbursement of these funds, nothing further is available from the carrier's records

and accounts respecting the bonds. But other facts of record in this proceeding reveal another syndicate, the operations of which will now be taken up.

Redmond & Company were syndicate managers for the syndicate formed to underwrite these bonds under an agreement dated November 22, 1904. As early as the 12th of that month they had received acceptances from foreign subscribers for $375,000 in answer to cablegrams of the previous day which contained the following:

Have bought for January delivery $6,000,000 Pere Marquette Refunding 4's, guaranteed by Cincinnati, Hamilton & Dayton, at 88.

Redmond & Company did not produce any contract embodying these terms, and it will be noted that the C., H. & D. had not at that date authorized any such guaranty. Coincident with such authorization, on November 18 Eugene Zimmerman for the C., H. & D. addressed a letter to Redmond & Company offering them the bonds at 87½ and interest, the price paid by the C., H. & D. The bonds and mortgage were to be in such form as Redmond & Company's counsel might approve, and payment was to be made when and as they were ready for delivery. The offer was accepted on the same day.

According to the syndicate agreement the managers had purchased the bonds at 87½ and interest, payable on or about January 1, 1905, and the syndicate agreed to pay 88 and interest therefor, Redmond & Company not to receive any other compensation for their services as managers. All the acceptances of interest in the syndicate were received by December 7, but as before stated actual deliveries of and payments for the bonds were not made before the last of January following. The bonds were all sold by the syndicate before they were delivered by the C., H. & D. and the subscribers consequently made no payments whatever on their subscriptions. The following statement shows the operations of the syndicate:

RECEIPTS.

1905.			
Jan. 30 and 31.	Sold 6,000 bonds as follows:		
	25 at 88 and interest	$22,080.56	
	5,543 at 92 and interest	5,117,345.67	
	222 at 92½ and interest	206,043.11	
	130 at 92¾ and interest	120,993.87	
	80 at 93 and interest	74,642.97	
			$5,541,106.18

DISBURSEMENTS.

Jan. 27.	For 201 bonds at 87½ and interest	176,455.67
Jan. 30.	For 5,799 bonds at 87½ and interest	5,092,810.66
Feb. 1.	Listing bonds, etc., Amsterdam	800.00

Feb.	1.	Commission one-fourth per cent on 303 bonds		
Feb.	2.	Cash for extra work		
Feb.	2.	Strong & Cadwallader, for legal expenses		9,
Feb.	3.	Rudolph Kleybolte & Co., forward expense on 988 bonds		1,
Feb.	6.	Advertising, cables, and sundry expenses		3.
Feb.	6.	Redmond & Co., syndicate manager's commission, one-half per cent on 6,000 bonds		30,
		Selling commission, one-half per cent, as follows:		
Feb.	6.	Post & Flagg	$2,710	
Feb.	6.	Rudolph Kleybolte & Co	10,125	
Feb.	6.	Richardson & Clark	375	
Feb.	6.	Banque Federale, Zurich	50	
Feb.	6.	Basler Handelsbank, Basel	870	
Feb.	6.	Messrs. Van Oss & Co., The Hague	2,500	
Feb.	6.	Messrs. Zahn & Co., Basel	25	
Feb.	6.	Messrs. de Speyr & Co., Basel	10	
Feb.	6.	Alexander Thomas & Co	25	
Feb.	7.	Redmond & Co	13,185	
				29,
Feb.	7.	Syndicate profits		196,
				5,541,

The selling commissions were paid under a provision of the s cate agreement that subscribers who sold bonds on the syndi account should receive one-half per cent commission.

The syndicate profits were disbursed among the subscriber February 7, 1905, according to the syndicate's records, as follows

Participants.	Accepted.	Participation.	Pr
	1904		
Rudolph Kleybolte & Co		$1,950,000	$64,
Post & Flagg	Nov. 30	250,000	8,
Keech, Loew & Co	Nov. 25	100,000	3,
Kinnicutt & Potter	...do...	250,000	8,
H. B. Hollins & Co	...do...	400,000	13,
Lehman Bros	Nov. 23	100,000	3,
Geo. W. Young	Dec. 5	100,000	3,
Eugene Zimmerman	Dec. 2	250,000	8,
Central Trust Co. of New York	Nov. 30	750,000	24,
Henri B. Corse	Nov. 23	500,000	16,
Thos. H. Tracy	Nov. 28	50,000	1,
J. & W. Seligman & Co	Nov. 25	200,000	6,
Strong, Sturgis & Co	Nov. 23	100,000	3,
Richardson & Clark	Nov. 25	50,000	1,
W. G. Willcox	Nov. 30	25,000	
First National Bank, Baltimore	Dec. 7	50,000	1,
J. F. B. Mitchell, jr	Nov. 17	5,000	
Swiss Bankverein, London	Nov. 12	50,000	1,
Messrs. de Speyr & Co., Basel	...do...	50,000	1,
Basler Handelsbank, Basel	...do...	50,000	1,
Messrs. L. Behrens & Sohne, Hamburg	...do...	50,000	1,
Messrs. Zahn & Co., Basel	...do...	25,000	
Messrs. Mallet Freres & Cie, Paris	...do...	100,000	2,
Banque Federale, Zurich	...do...	50,000	1,
Messrs. Van Oss & Co., The Hague	Nov. 14	25,000	
Redmond & Co		445,000	14,
Redmond & Co., one-half per cent for participation			2,
		5,975,000	196,
Albert Willcox (withdrawn 11-30 H. S. R.)	Nov. 25	25,000	
		6,000,000	196,

Two of the three members of the C., H. & D. executive committee who voted in favor of their company's purchase, guaranty, and sale of these bonds, all at the same price, were Eugene Zimmerman and Thos. H. Tracy, who were also represented in this syndicate, participating in the profits to the extent of $8,237.26 and $1,647.45, respectively. Eugene Zimmerman was also a member of the Pere Marquette board at the time. Other C., H. & D. directors voting in favor of this transaction were Rudolph Kleybolte, whose firm was a subscriber for $1,950,000, receiving $64,250.65 of profits in addition to selling commissions of $10,125, and J. N. Wallace, fourth vice president of the Central Trust Company, which had subscribed for $750,000 and received profits of $24,711.80. George W. Young, who subscribed for $100,000 and received profits of $3,294.90, was president of the United States Mortgage & Trust Company, which was represented on the C., H. & D. board by G. M. Cumming, the third member of the executive committee voting in favor of the transaction. Hollins & Company, in control of the C., H. & D., received profits of $13,179.61 on a subscription of $400,000.

The "purchase and sale" of these bonds by the C., H. & D. was obviously to give greater color to the legality of its guaranty thereon. The purpose of the guaranty was, of course, to add as much as possible to the security of the bonds and to the marketability thereof. In this connection it is of interest to note that the purchase and sale of the bonds, effected in January, 1905, were not recorded in the accounts of the C., H. & D. until the following June.

The Pere Marquette later put out further bond issues under the same mortgage, and on these the C., H. & D. again indorsed its guaranty of principal and interest. This was done under authority voted by the board on March 24, 1905, authorizing the fiscal agents to purchase—

> all refunding mortgage bonds of the Pere Marquette Railroad Company when and as from time to time the same are issued, upon such price and terms as they shall deem best.

The fiscal agents were authorized to sell the bonds after the indorsement of the guaranty on such terms as they might deem best. Further corporate action was taken on this matter on April 27, 1905, when the executive committee voted that a letter be sent to the board of the Pere Marquette offering the latter 35,000 shares of terminal company stock at $47 per share. In the concluding paragraph the C., H. & D. offered to buy up to $4,000,000 of the refunding bonds at 90 and interest any time within six months. The C., H. & D. stockholders approved these acts on April 29, at which meeting there was presented a resolution passed by the Pere Marquette board on April 27 accepting the offer in the C., H. & D. letter just mentioned.

The first additional block of the bonds acquired by the C., H. & D. amounted to $2,361,000 in par. These the fiscal agents reported on June 21, 1905, had been purchased at 90 and interest and had been sold at 85½ and interest to a syndicate represented by the Central Trust Company of New York. The record shows that the latter company was manager of this syndicate, which was formed under an agreement dated June 8, 1905, and which provided for the purchase of $2,558,000 of bonds at 89 and interest, from the Central Trust Company. The syndicate subscribers were as follows:

Redmond & Co	$1,390,000
Hallgarten & Co	200,000
Rudolph Kleybolte & Co	200,000
H. B. Hollins & Co	500,000
Lawyers Title Insurance & Trust Co	50,000
Central Trust Co. of New York	218,000
Total	2,558,000

Of the Redmond subscription $180,000 was allotted to sundry subparticipants, but who they were or what other subdivisions of subscriptions were made is not of record.

The Central Trust Company had bid for the bonds on June 7 at the price of 89 and interest, and the bid was formally accepted on the following day by Hollins & Company as fiscal agents of the Pere Marquette. Then, on June 10, Hollins & Company addressed a letter to the trust company reading as follows:

> Out of the commission of 3½ per cent to be paid us upon the purchase of $2,558,000 par value of Pere Marquette Railroad Company refunding mortgage 50-year 4 per cent gold bonds, we hereby agree to pay to you 1½ per cent for services in forming a syndicate to take over said bonds, and to Messrs. Redmond & Company 1 per cent for services in selling the same.

The first block of bonds, the identical $2,361,000 previously referred to, was purchased by the syndicate on June 21, 1905, at 89 and interest, the subscribers paying into the syndicate funds on that day their pro rata proportion of such price, $2,145,884.74, which averaged $908.89 per bond. Apparently the bonds were delivered at once to the subscribers, subject to call by the manager, except that Redmond & Company withdrew 150 bonds from the syndicate control, paying $750 for the privilege. The second block of bonds, 197 in number, was purchased by the syndicate on September 28, 1905, Redmond & Company furnishing the funds therefor. These advances were not repaid until the close of the syndicate on January 19, 1906. In the case of the 197 bonds, the manager paid Hollins & Company 86¾ and interest and paid 1½ per cent commission to itself and 1 per cent to Redmond & Company. This procedure differed from that followed in the purchase of the first block, for there the price of

89 and interest was paid in full to Hollins & Company, who paid the commissions to the other two parties. The foregoing transactions are summarized in the following statement of receipts and disbursements:

RECEIPTS.

1905.		
June 21.	Payments by subscribers for 2,361 bonds at 89 and interest	$2,145,884.74
Sept. 28.	Payment by Redmond & Co. for 197 bonds at 89 and interest	177,284.88
June 22 and 23.	Payment of one-half per cent by subscribers who withdrew 150 bonds	750.00
1906.		
Jan. 19.	Payments by subscribers for 197 bonds at 89 and interest, and for net syndicate expenses	176,728.70
	Total	2,500,597.77

DISBURSEMENTS.

1905.		
June 21.	To H. B. Hollins & Co. for 2,361 bonds at 89 and interest	$2,145,884.58
Sept. 28.	To H. B. Hollins & Co. for 197 bonds at 86¾ and interest	172,801.83
Sept. 28.	To Redmond & Co. for 1 per cent on 197 bonds	1,970.00
Sept. 28.	To Central Trust Co. of New York for 1¼ per cent on 197 bonds	2,462.50
1906.		
Jan. 19.	To Redmond & Co. for 197 bonds at 89 and interest	176,262.47
Jan. 19.	To Redmond & Co. for legal services of Joline, Larkin & Rathbone ($500) and expenses	643.25
Jan. 19.	To Joline, Larkin & Rathbone for additional legal services and expenses	572.98
May 31.	To balance	.16
	Total	2,500,597.77

From the sale of these $2,558,000 of bonds the C., H. & D. received credit at 85½ and interest, the difference between which and the sums paid for the bonds by the syndicate, 89 and interest, being absorbed by—

Redmond & Co	$25,580
Central Trust Co. of New York	31,975
H. B. Hollins & Co	31,975

evidently in accordance with the arrangement outlined in the letter of Hollins & Company dated June 10, as previously quoted.

The syndicate subscribers did not fare so well. Redmond & Company had been appointed sole selling agents to handle the bonds, they to receive a cash commission of 1 per cent on the $2,558,000, payable upon the completion of the syndicate. On August 8, 1905, they reported that they had sold $255,000 of the bonds, delivery of

which was made to them by the syndicate subscribers three days later. These 255 bonds had been sold at various times from June 14, 1905, 224 at 93 and interest less three-fourths for commissions, and 31 at 92½ and interest less one-half for commissions, which, with bank interest, amounted in all to $235,880.41. The subscribers turned over their pro rata proportion of bonds and received $925.02 per bond, representing a gross profit of about $16.13 per bond, not allowing for interest on money invested. This was their only profit.

Under the provisions of its agreement the syndicate was to terminate on December 7, 1905, but the managers, by notice dated December 6, extended the term for three months. This action was practically contemporaneous with the appointment of a receiver for the C., H. & D. and Pere Marquette, so that it is not surprising to find that the syndicate managers formally terminated the syndicate by notice dated January 18, 1906, which reads in part as follows:

> We have adopted this course on account of the existing situation of the railroad company, in which connection we desire to direct your attention to the receiver's statement that the said bonds are unquestioned obligations of the railroad company, and that the mortgaged property is of a value much greater than the amount of outstanding refunding bonds and interest thereon.

So far as the syndicate records indicate, bonds were left on subscribers' hands on January 19, 1906, as follows:

Redmond & Co	$1,253,000
Hallgarten & Co	184,000
Rudolph Kleybolte & Co	179,000
H. B. Hollins & Co	447,000
Lawyers Title Insurance & Trust Co	45,000
Central Trust Co. of New York	195,000
Total	2,303,000

Undoubtedly the credit of the two railroads had waned fast during the summer of 1905.

The profits in this syndicate were small, though the Hollins firm reduced the carrier's proceeds from the 87½ realized on the $6,000,000 block to 85½ on these $2,558,000, thereby allowing the payment of 1 per cent commissions to Redmond & Company and 1¼ per cent to the Central Trust Company, incidentally providing $31,975 for themselves. In this connection it should be noted also that the Redmond firm was represented on the board of the Pere Marquette by William Redmond Cross, he having been elected a director on March 7, 1905.

Thus far $8,558,000 of the $9,207,000 of these Pere Marquette refunding bonds on which the C., H. & D. guaranty was indorsed have been accounted for. The remaining $649,000 are recorded as having been sold to the C., H & D. at 90 and interest prior to Sep-

tember 25, 1905. On October 4 and 17 the Hollins firm notified the C., H. & D. treasurer of the sale of said bonds at 89 less 3½ per cent commission. Though this sale was to the Central Trust Company, the bonds evidently were not included in the transactions of the syndicate last described. How much the purchase of the control of these properties by the Morgan interests at about this time may have had to do with this last transaction can only be surmised. The prices warrant the conclusion that the 3½ points lost by the C., H. & D. were divided up as before, namely, 1 point to Redmond & Company and 1¼ points each to the Central Trust Company and H. B. Hollins & Company.

Inasmuch as the C., H. & D. had purchased the last blocks of bonds, amounting to $3,207,000, from the Pere Marquette at 90 and interest, the sale thereof at 85½ and interest resulted in a loss which amounted to $144,315. The Pere Marquette board on September 28, 1905, authorized the charging of $106,245 of this against that company in its open account with the C., H. & D. Upon authority of the receiver, $37,577.50 of the balance was similarly adjusted in the January, 1906, accounts. The remaining $492.50, through an accounting error, was apparently never adjusted. Thus the C., H. & D. was relieved of practically all of its direct loss on account of the purchase and sale of the $9,207,000 Pere Marquette refunding bonds guaranteed by it, the same being shifted to the Pere Marquette.[1]

9. *Lease of the Pere Marquette by the C., H. & D.*—Several meetings of the directors and of the stockholders of the C., H. & D. were held to consider the leasing of the lines of the Pere Marquette as contemplated from the inception of the union of the two properties on July 7, 1904, and a number of changes were made in the provisions of the proposed lease up to the final action thereon by all

[1] The plan and agreement for the reorganization of the Pere Marquette Railroad Company, dated October 30, 1916, contains the following with respect to the guaranty by the C., H. & D. of the $9,207,000 of Pere Marquette refunding mortgage bonds:

"$9,207,000 face amount of the refunding mortgage bonds bear a guaranty by the Cincinnati, Hamilton & Dayton Railway Company of the payment of the principal and interest thereof. The reorganization managers have entered into arrangements under which it is expected, if a sufficient amount of refunding mortgage bonds bearing such guaranty are deposited under the plan by March 1, 1917, to immediately cancel the said guaranty borne by refunding mortgage bonds at any time deposited under the plan against a net cash payment sufficient to provide for the distribution not later than upon the consummation of the reorganization to holders of certificates of deposit for refunding mortgage bonds bearing such guaranty, at the rate of $12.50 for each $1,000 face amount of such bonds. Whether or not such arrangement be carried out, any net amounts received by the reorganization managers, or their successors in interest, upon or in discharge and cancellation of such guaranty (which may be discharged and canceled prior to the consummation of the plan), after defraying all costs and charges in connection with the collection or receipt thereof, including counsel fees, will be distributed pro rata among the holders of certificates of deposit for refunding mortgage bonds guaranteed as aforesaid (or the registered holders of such other certificates or receipts as may be issued on the consummation of the reorganization on the surrender of such certificates of deposit) under such reasonable regulations as the reorganization managers may prescribe."

parties on March 6, 1905. Under the ultimate arrangement actual delivery of possession to the C., H. & D. occurred at one minute past midnight of that day.

The contract of lease was dated March 1, 1905, and provided an outright lease for 999 years of all the properties then or thereafter owned, controlled, or operated by the lessor. Its two important provisions may be summarized as follows:

(1) Upon execution and delivery of the lease the lessor agreed to deliver all its treasury stock to the lessee, being 14,878 shares of its preferred and 18,344½ shares of its common, to be held and disposed of as the lessee might see fit, provided that if the lease was terminated for any cause within ten years from its date the lessee would return said shares, except that during said period the lessee might mortgage, sell, or dispose of the stock, the proceeds to be impressed with a trust for the expenditure thereof for additions, extensions, and rolling stock for the lessor which should be its exclusive property.

(2) The C., H. & D. covenanted to pay as rental a sum equal to 1 per cent on the common stock which was to be considered in full of all arrears to January 1, 1905, and to pay semiannually thereafter sums equivalent to dividends of 4 per cent on preferred stock and 5 per cent on common stock in addition to organization expenses, interest, taxes, and rentals for trackage rights and leased lines. To secure the payment of the rental and the proper maintenance of the properties the lessee agreed to deposit the entire capital stock, 1,070 shares, of the Dayton Union Railway Company with a trustee, and this was accomplished under a deposit agreement with the Central Trust Company of New York.

In the accounts of the C., H. & D. the accrual of rental under this lease covered only the dividends as provided therein and these dividends were computed on the amount of stock held by the outside public, $10,512,200 par value of preferred and $3,165,550 par value of common; in other words, no dividends were accrued on the 110,000 shares of common which the company had purchased nor on the 14,878 shares of preferred and 18,344½ shares of common acquired under the lease. But even on this basis the addition to the fixed charges of the C., H. & D. would amount to at least $578,765.50 per annum, contingent, of course, upon the failure of the Pere Marquette to earn the dividends. That contingency had to be met later. How far the C., H. & D. came from earning this additional burden is shown elsewhere. The rental was paid to July 1, 1905, later accruals being written off the books. The subsequent history of this lease is related in connection with the efforts of the Morgan management to free the C., H. & D. from some of the burdens laid upon it during the Hollins régime.

10. *Purchase of Toledo Railway & Terminal Company stock.*— We come now to a transaction on account of which the general counsel of the Pere Marquette, after investigation, prepared for the prosecution of certain individuals connected with the management

of the C., H. & D.-P. M. system and refrained only because he thought he saw opportunity to recover a substantial amount for his company by adopting another course. We refer to the purchase of the entire outstanding 35,000 shares of the practically worthless capital stock of the terminal company by the C., H. & D. and the immediate sale thereof by it to the Pere Marquette at an advanced price. The details of this transaction appear in the story of the construction, financing, and sale of the terminal company set forth in Appendix 12, but its salient facts are repeated here because of their importance.

It appears that contemporaneously with the negotiations for the subscriptions of the Toledo-St. Louis interests to the C., H. & D. common-stock syndicate, other and separate negotiations for the sale of their terminal company stock had been conducted by them through an unnamed agent "who is in a position to negotiate with the proposed purchasers." The best results of those negotiations up to April 26, 1904, appear to have been an offer of $10.50 per share. This "agent" demanded a commission of at least $10,000, to be increased if he succeeded in securing a still better price. How much further those negotiations proceeded at that time and in the months following, the record does not disclose.

It was not until April 27, 1905, that corporate action on the purchase of this stock was taken by the C., H. & D. It had been agreed upon by those in control on March 3, 1905, at a meeting in New York in which Thos. H. Tracy, Eugene Zimmerman, H. B. Hollins, and his partners, Govin and Burke, participated. Tracy represented the sellers. The result of that meeting was a formal offer from the construction company, made by Tracy as its president, to sell its terminal company stock to the C., H. & D. or to H. B. Hollins & Company at $41 per share, net, cash to be paid on delivery April 15, but conditioned upon the St. Louis group being privileged to put in their stock upon like terms. The offer was indorsed with an acceptance by Zimmerman as president of the C., H. & D., subject to the approval of the board or executive committee and subject also to the declination of the Hollins firm to purchase. By a letter of the same date that firm stated that it would recommend that the C., H. & D. board or executive committee approve the purchase on the basis named. In addition, Tracy had the "positive personal promise," as he himself expressed it, of Zimmerman and each of the three members of the Hollins firm that the deal would be carried through.

On April 12 the stock was forwarded to the National Bank of Commerce, New York City, with instructions to deliver to H. B. Hollins & Company on the 15th. This was done, and the $41 per

share received therefor was credited in the proportion of 24,40 shares to the Toledo interests and 10,597.222 shares to the St. I interests. In the same proportion, these parties bore a commi of $42,000 paid by them to "New York brokers."

In addition to their share of this commission, the St. Louis i ests deducted from the gross receipts $13,478.12, representing a proportion of notes given to pay the interest due January 1, 1 on the bonds of the terminal company, and also $2,744.06 for c expenses, leaving a net sum of $405,517.27 to be distributed an the St. Louis underwriters. This sum was not disbursed in c except the profit accruing to the Commonwealth Trust Comp itself, but was applied in part payment of advances made on the i vidual notes given to the Commonwealth Trust Company in con tion with their joint subscription to the C., H. & D. common-s syndicate. This division of the net profits was as follows:

Commonwealth Trust Co	$61, 757. 62
Charles H. Turner	6, 696. 62
L. B. Pierce	33, 483. 09
L. B. Tebbetts	13, 393. 23
Elias Michael	6, 696. 62
A. D. Brown	13, 393. 23
Edw. F. Goltra	13, 393. 23
Otto F. Stifel	13, 393. 23
T. W. Carter	26, 786. 48
James T. Drummond	13, 393. 23
Samuel C. Davis	13, 393. 23
S. W. Fordyce	35, 715. 28
R. M. Scruggs estate	13, 393. 23
C. G. Knox	13, 393. 23
S. M. Dodd	13, 393. 23
C. G. Warner	13, 393. 23
W. D. Orthwein	13, 393. 23
John E. Pilcher	13, 393. 23
Russell Harding	13, 393. 23
Altheimer & Rawlings Investment Co	13, 393. 23
F. E. Marshall	6, 696. 62
Morgan, Bryan & Christie	13, 393. 23
W. F. Nolker	6, 696. 62
Chas. A. Stix	3, 348. 32
Wm. Stix	3, 348. 32
Jesse D. Dana	13, 393. 23
Total	405, 517. 27

The profits of the Toledo interests evidently were not all disburse upon the consummation of the sale. Their gross receipts wei $1,000,513.89. The record shows, however, that a dividend o $650,000 on the stock of the construction company was paid on Apr 22, 1905, as follows:

D. Robison, jr., & Sons Co	$126,750.00
Edward Ford	126,750.00
John Cummings	91,000.00
Geo. G. Metzger	60,666.67
King & Tracy	30,333.33
Wm. Hardee	91,000.00
James J. Robison	61,750.00
James J. Robison, trustee	61,750.00
Total	650,000.00

There is much significance in the fact that the Toledo-St. Louis interests received only $41 per share, whereas later the C., H. & D. paid $42 per share and interest; also in the further fact that the stock was received and paid for on April 15, 1905, by H. B. Hollins & Company, then fiscal agents for both the C., H. & D. and the Pere Marquette. In order to raise the funds to make payment, that firm arranged with the North American Trust Company, the Trust Company of America, and the United States Mortgage & Trust Company, all of New York, for a loan of $500,000 from each for the Pere Marquette, $1,500,000 in all. The latter's 60-day 5½ per cent notes were given therefor, dated April 15, redeemable at an earlier date if desired by the borrower, and secured by the terminal company stock. These notes were not at that or any later time recorded on the books of the Pere Marquette. Up to this time there had been no corporate action by either road with respect to the purchase.

On April 27, 1905, the executive committee of the C., H. & D. met, directors Zimmerman, Cummings, Turnbull, and Wallace being present. A communication from vice president Russell Harding was read, wherein he recited certain conditions relating to the terminal company and announced his opinion that it would be decidedly to the advantage of both the C., H. & D. and Pere Marquette to acquire control of that road through stock purchase. Such are the official railroad minutes. Elsewhere in the record before us it appears that Harding was the beneficial owner of 300 shares of that stock, on which he received profits of $13,393.23 as a consequence of the purchase he advocated as the chief operating officer of the system. The executive committee authorized the purchase of the entire issue of stock, 35,000 shares, at $42 per share in cash and also directed that a communication be sent to the board of the Pere Marquette offering the said shares to that company at $47 per share in cash. The same communication contained the C., H. & D.'s offer, already referred to, to take not exceeding $4,000,000 of Pere Marquette refunding bonds at 90 and interest from time to time within the following six months. The board of the latter road voted its acceptance of these offers at a meeting on the same day. The two

roads then had interlocking directorates, representing the Hollins control.

Payment for the stock by the C., H. & D. was not made until June 21, 1905, probably awaiting the formation of the syndicate described at pages 138 to 140, for it was to this syndicate on that same day that the Hollins firm as fiscal agents of the C., H. & D. made a sale at 85½ and interest of $2,361,000 of the Pere Marquette refunding bonds, the proceeds from which were credited to the C., H. & D. On that day the latter's account with the fiscal agent was charged with the purchase price of the 35,000 shares of terminal company stock at 42 and with $15,354.18 of interest. This latter was evidently the interest on the $1,500,000 of the Pere Marquette notes to the trust companies, which as would be expected were also redeemed on that day.

Simultaneously with the recording of the purchase of the stock, the sale thereof at an advance of $5 per share was entered on the C., H. & D. books as a charge against its lessor company. Allowing for interest as before stated, the C., H. & D. profited in this transaction by $159,645.82, which ultimately, by a perversion of accounting principles, was disposed of as a credit to "cost of road."

To fully appreciate this transaction it must be borne in mind that the stock dealt in was worthless. Far from being a profit-earning investment, it was the stock of a company which was not even earning its fixed charges. As already shown in the complete terminal company story, Appendix 12, $3,000,000 of this stock was a pure bonus given with the bonds which were issued to pay for constructing the road, and the remaining $500,000 had been issued simply to legalize the issue of those bonds and had been misappropriated by those then and at the time of the sale of the stock still in control. Both the C., H. & D. and the Pere Marquette already had contracts granting them the unlimited use of all the facilities of the terminal company, and in making this purchase they simply added to their liability for that company's deficits. We direct attention to these details: That the sale was negotiated for the sellers by Thos. H. Tracy, general counsel and a director of both roads; that it was urged by Russell Harding, vice president of the C., H. & D., president of the Pere Marquette and also a director of both companies; that both Tracy and Harding had beneficial interests in the stock which was being sold; that another representative of the Toledo syndicate on the C., H. & D. board was James J. Robison, who directly, and also through membership in the firm of D. Robison, jr., & Sons Company, owned a substantial interest in the stock; and that the fiscal agents, in control of these two carriers, not only sanctioned these transactions but themselves received $35,000 in cash from the practically

insolvent roads through the deal. The record does not disclose who received the $42,000 in commissions paid by the Toledo-St. Louis syndicates.

These "fiscal agents," without themselves putting up one penny, borrowed $1,500,000 on the notes of the Pere Marquette, purchased worthless stocks at 41, sold the same immediately to the C., H. & D. at 42, which on the same day sold the same to the Pere Marquette at 47. The amount paid by the latter, $1,645,000, was entered as an "investment," was subsequently lost by reason of foreclosure of the terminal company bonds, and in 1908 was charged as a worthless asset to the Pere Marquette's "cost of road and equipment."

The coincidence in dates and occurrences evidenced in this record justifies the view that this purchase of the terminal company stock was an integral part of the Zimmerman-Hollins plan to develop their newly acquired Detroit, Toledo & Ironton Railway. Apparently the water front entrance necessary for that road in Toledo was most readily to be obtained from the terminal company, and it was in fact obtained from that source after the control was thus established.

11. *Attempted development of Detroit, Toledo & Ironton, at the expense of the C., H. & D.*—The five subjects next following outline this Zimmerman-Hollins plan. The Detroit, Toledo & Ironton was organized May 2, 1905, and was the successor of the Detroit Southern Railroad, sold at foreclosure the preceding day, after receivership beginning July 5, 1904. The Zimmerman-Hollins combination came into control of the Detroit, Toledo & Ironton and endeavored to develop it as a carrier of lake cargo coal. Using their control of the C., H. & D., they arranged to transfer that company's interest in dock properties at Toledo, which had been obtained from the terminal company, and its interest in a well-developed project to bridge the Ohio River between Ironton, Ohio, and Ashland, Ky., to the Detroit, Toledo & Ironton, and also arranged "reciprocal" trackage and terminal exchanges whereby the latter could use certain tracks and terminals of the C., H. & D. and of the terminal company, so as to establish the through route as contemplated, give the Detroit, Toledo & Ironton an entrance into Toledo, and dock facilities at that point. In the territory, particularly the terminal territory, which it served, and also in the traffic handled, the Detroit, Toledo & Ironton was a competitor of the C., H. & D. These arrangements were made so near the time of the Hollins sale of the C., H. & D. to the Erie, some of them indeed effected after the Erie had bought control, as to make it appear that they were made in contemplation of such a sale. As those in control must have known that the C., H. & D. was then practically insolvent there would seem to be no defense for their attempt to transfer such val-

uable properties and rights to a rival road, their control of which was entirely dissociated from the C., H. & D. We shall consider, first, the matter of the Ashland & Ironton Bridge Company because its history antedates that of the other subjects.

a. *Ashland & Ironton Bridge Company transactions.*—Ironton, Ohio, is on the Ohio River, opposite Ashland, Ky. The C., H. & D. did not reach Ironton over its own rails, but for years had had trackage rights from Deans, Ohio, to Ironton, 12 miles, over the Iron Railway. The rental at first was nominal, but from about 1900 it was increased from time to time until it became onerous. In September, 1902, the stockholders of the then Detroit Southern Railroad, afterwards reorganized as the Detroit, Toledo & Ironton, authorized the purchase of the Iron Railway and in June, 1903, opened up a through line between Detroit and Ironton, competitive with the C., H. & D.

Previous to this, in 1902, the officials of the C., H. & D. had become convinced that the coal fields of southeastern Ohio tapped by their line were approaching exhaustion. Without that traffic great difficulty would have been experienced in earning the interest on the bonds on that branch of the road, and the management set about to forestall such a misfortune. Definite plans were formulated to tap the coal fields of eastern Kentucky by building an independent connection from Gallia, Ohio, on the C., H. & D. into Ironton and a bridge across the Ohio to Ashland, Ky., where a connection with the Ashland Coal & Iron Railway was to be made, control of the latter and of the Northern Coal & Coke Company being included in the project. A connection with the Chesapeake & Ohio at Ashland was another important feature of the plan, the C., H. & D. management desiring to obtain the valuable strategic position which an independent entrance into and control of large coal-producing fields would give in dealing with the Chesapeake & Ohio for the latter's lake cargo coal. The ability to handle lake coal by this route rather than through the congested Cincinnati terminals was an additional advantage.

In furtherance of these plans a controlling interest was acquired by the C., H. & D. in the Ashland & Ironton Bridge Company, which had rights to build a bridge over the Ohio between Ironton and Ashland, Ky., surveys were made of the proposed line into Ironton, and right of way was purchased for that line and also for the approaches to and connection with the proposed bridge. Up to June 1, 1904, the C., H. & D. had invested $239,115.06 in the project, which also included the organization of the Toledo & Ohio River Railway Company to own the new extension in Ohio, and of the Ohio River Construction Company to construct the bridge. At a meeting on June 2, 1904, the executive committee of the C., H. & D. approved

the actions of and expenditures by the president in carrying out this project, which for several months had lain dormant on account of his serious illness.

No separation in the C., H. & D. accounts had been maintained between advances to the bridge company and advances to the new railway company; in fact, all these advances were carried in the form of notes of the latter under "bills receivable" and were so carried until June, 1907. However, in January, 1905, a study of the available records was made which in the following summer was revised and a separation of the costs established. This seems to have been in anticipation of the following corporate action:

The executive committee, directors Zimmerman, Turnbull, and Wallace being present, on June 30, 1905, authorized and empowered president Zimmerman to sell, at cost to the C., H. & D., its entire interest in the Ashland & Ironton Bridge Company, the Ohio River Construction Company, and the Toledo & Ohio River Railway Company. On the same day president Zimmerman, on behalf of the C., H. & D., made an agreement with one Samuel B. Lawrence whereby the latter was to purchase the entire outstanding capital stock and indebtedness of the three companies in the bridge project, the purchase price to be the cost thereof to the C., H. & D., estimated at $70,000, and to be paid by a construction company to be formed for the purpose of constructing a bridge across the Ohio River for the Ashland & Ironton Bridge Company. Lawrence, it may be noted, was president of the Michigan Securities Company. Subsequently, in August, 1905, that agreement seems to have been amended to exclude therefrom the capital stock and indebtedness of the Toledo & Ohio River Railway Company, for on October 10, 1905, president Zimmerman reported to the board that, pursuant to authority, he had sold the company's entire interest in the Ashland & Ironton Bridge Company and the Ohio River Construction Company, and received therefor a 2½-year 5 per cent note of the Kentucky Construction Company for $82,000, dated September 26, 1905, and an agreement of that company that it would construct a railway bridge at or near Ironton for the bridge company or its successors or assigns and begin construction within one year from June 30, 1905. The board ratified and confirmed these acts.

In arranging this sale the management appears to have overlooked the fact that by agreement dated April 6, 1905, the C., H. & D., as already recited herein, had sold sundry securities to the Michigan Securities Company, among which was the entire capital stock of the Ashland & Ironton Bridge Company. To remedy this situation the board at a special meeting on September 6, 1905, voted to amend the bill of sale so as to exclude these stocks therefrom.

As stated, the consideration for this sale was to be the cost to the C., H. & D., and this note given by the Kentucky Construction Company for $82,000 was intended to cover $75,644.61 of expenditures up to July 7, 1905, plus $6,000 previously paid for bridge company stock to complete ownership. The bridge was manifestly the key to the whole situation. Without a control of it the C., H. & D.'s investment of some $175,000 in the proposed connection with its own line must necessarily have been heavily discounted, if indeed not wholly lost. Certainly the value of the Ashland & Ironton Bridge Company's properties to the C., H. & D. was not to be measured solely by the amounts it had expended on that vital part of the entire project. It should be especially noted that while the executive committee originally authorized the sale of the entire bridge project, there were eventually sold only the vital parts, the bridge company, and the construction company which was to build the bridge. The third link, the projected line from Gallia to Ironton, was not necessary for Detroit, Toledo & Ironton purposes, for the latter road already reached Ironton over its own rails. It is also of significance that the board's ratification of this sale was at a special meeting called on October 10, 1905, those present being directors E. Zimmerman, Joseph B. Foraker, W. L. Dechant, Thomas H. Tracy, Russell Harding, Richard N. Young, and James J. Robison. Although the Erie management had indicated its decision nearly two months before to buy the C., H. & D. and the Erie board had formally authorized that purchase about three weeks before, Hollins still controlled the C., H. & D. board.

It may fairly be said that the transaction of sale was directed largely by personal interest of the Hollins management in the Detroit, Toledo & Ironton, if indeed it may not be characterized as utterly fraudulent. Director James N. Wallace, who first presented the project to the executive committee, testified herein that he had no recollection of the transaction but undoubtedly did whatever he did at Hollins's direction. It is also of record that when J. P. Morgan & Company took over the C., H. & D., demand was made on H. B. Hollins & Company for the return of these properties, and the demand was satisfied without contest.

During the late summer and fall of 1905 the construction work had been advanced by the new owners so that by February 23, 1906, when the properties were repurchased by J. P. Morgan & Company in the interest of the C., H. & D., the aggregate expenditures and interest charges amounted to a sum in excess of $206,000, the price at which it was repurchased. The construction of the bridge was then stopped and has never been resumed. In August, 1909, at the time of the readjustment of the C., H. & D. finances and its release from

receivership, that company paid to J. P. Morgan & Company $329,824.70 in reimbursement for the advances made in the reacquisition and preservation of the properties in question. This amount, together with subsequent advances of $41,829.89 to the Ashland & Ironton Bridge Company and advances to the Toledo & Ohio River Railway Company accumulated since 1903, produce aggregate expenditures to June 30, 1914, of over $541,000. Far from being a source of revenue these properties for the year ending December 31, 1915, failed to earn expenses and taxes by $1,784.58, and therefore furnished no offset to the interest on the investment paid by the C., H. & D. in one form or another.

b. *Great Central Dock Company transactions.*—Another vital part of the plan of the Zimmerman-Hollins combination to develop their newly acquired Detroit, Toledo & Ironton at the expense of the C., H. & D., and one put through almost simultaneously with the Ashland & Ironton Bridge affair, was the transfer to the Detroit, Toledo & Ironton of the C., H. & D.'s investment in the Great Central Dock Company. The latter's physical property consisted of valuable dock and industrial properties on the east bank of the Maumee River in Toledo, Ohio. It seems to have been owned originally by the Robisons, who transferred it to the Toledo Riverside Railway Company in the course of the construction of the terminal company, payment being made in $150,000 of first mortgage 5 per cent bonds of the Riverside Company, issued under mortgage dated February 20, 1902, in which the Ohio Savings Bank & Trust Company, of Toledo, the Robisons' bank, was trustee. On that same date the stockholders and directors of the terminal company voted to accept the offer of the Riverside Company to transfer its entire capital stock, $150,000, to the former in consideration of the indorsement of its guaranty of principal and interest on the Riverside Company's $150,000 of bonds. On July 2, 1904, the Riverside Company formally conveyed all the property rights and franchises to the terminal company, which then acquired additional property and constructed a connection between its main line and its water front property on the Maumee River.

In May, 1905, the Great Central Dock Company was organized in the interest of the C., H. & D., and on the 23d of that month the board of the terminal company voted to sell to the new company the property rights and franchises theretofore conveyed by the Toledo Riverside Railway Company and the additional property and connecting branch just described. The preamble to the resolution states, "said property and railroad are no longer useful in the conduct of the business of this company." The consideration was to be such sum as the chairman of the terminal company board might determine, the Great Central Dock Company to assume the mortgage

and pay the $150,000 of bonds. On August 30, 1905, a deed of the property to the new owners was recorded.

This identical property, however, had been included in the mortgage dated July 1, 1904, given by the terminal company to the Commonwealth Trust Company, of St. Louis, as trustee, to secure $3,500,000 of terminal company bonds. The latter's corporate action in the matter necessarily included a resolution calling upon the trustee to release said property from the mortgage. This release was executed by the trustee on August 28, and there was deposited with it the sum of $10,000, certified to by E. Zimmerman, as chairman of the terminal company board, as the consideration determined upon by him under the authority of that board. He also certified that as further consideration the Great Central Dock Company had assumed and agreed to pay the $150,000 of the Riverside Company's bonds, saying also—

> In my opinion, this price is fair and represents the true value of the property.

Zimmerman was interested with Hollins in the Detroit, Toledo & Ironton. Here, again, there is significance in the dates, for the organization of the dock company and the transfer of this property to it immediately followed the acquisition of control of the terminal company by the Hollins firm through successive purchase of its stock by Hollins, the C., H. & D., and the Pere Marquette.

Seemingly there were few corporate acts by the C., H. & D. in connection with this transaction. There is mention of the dock company in the minutes of a board meeting on June 1, 1905, held at the office of H. B. Hollins & Company in New York, at which president Zimmerman was authorized to contract with the Great Central Dock Company for certain construction work on and improvement in its property at Toledo. It was specifically provided that the C., H. & D. in payment for expenditures thus incurred might receive bonds or stock of the dock company, and upon any bonds so received the C., H. & D. officers were authorized to indorse the guaranty of the C., H. & D. The fiscal agents were authorized to sell the bonds from time to time, at such price and on such terms as they might deem best. The record does not show anything further with respect to these particular matters.

However, at a directors' meeting on October 10, 1905, about three weeks after the Erie board had voted to purchase control of the C., H. & D., president Zimmerman stated that the Great Central Dock Company had provided for the repayment of the advances to it, whereupon the board authorized the company's treasurer to receive the same and issue a proper receipt therefor. The treasurer's cash sheets for the following day show the receipt of $10,000 plus interest described as being proceeds of sale of Great Central Dock Company

stock to M. L. Sternberger, who, the record would indicate, was an associate of Zimmerman. On October 26 the receipt of $4,250 plus interest from the same party is recorded as being on account of the incorporation fees and interest paid on the Riverside Company's bonds which the dock company had assumed. This aggregate of $14,250 covered all advances made up to that time by the C., H. & D., the $10,000 item being the sum paid by the latter to the terminal company as the purchase price of the property conveyed to the dock company.

The Morgan management soon ascertained that something was wrong on the Toledo river front. The new executive committee of the C., H. & D. on November 29, 1905, rescinded all the prior resolutions of the board and executive committee relative to the dock company and disclaimed and disaffirmed "all action taken by officers of this company intended or calculated to divest this company of its interest in the said dock company or of any of the property held by said company." When, subsequently, demand was made for the restitution of the C., H. & D.'s assets, they were forthcoming without contest. Settlement was made in August, 1906, for the payments by Sternberger, the voucher of the C., H. & D. reciting the following:

> In repayment of the amount paid by H. B. Hollins & Company subsequent to December 4, 1905, in behalf of the Cincinnati, Hamilton & Dayton Railway Company, or its receiver, in connection with a recovery of the stock, assets, and control of the Great Central Dock Company (a subsidiary corporation of the C., H. & D. Ry. Co.) covering the following items originally paid (or assumed) by the C., H. & D. Ry. Co., subsequently repaid into its treasury by one M. L. Sternberger in October, 1905, pursuant to a plan to turn over the property of the dock company to others and later repaid by H. B. Hollins & Company as above stated.

c. *D., T. & I.-C., H. & D. trackage arrangements.*—The Detroit, Toledo & Ironton did not reach Toledo, Ohio, its line passing west and south of that city. The Zimmerman-Hollins combination caused the preparation, under date of July 1, 1905, of a contract which ostensibly provided for an *exchange* of trackage and terminal facilities between the two carriers then under their control, and further secured the adoption and execution of that contract by both carriers that same day. We need not attempt to measure in detail the advantages gained by each party to this contract. The document on its face shows a grant by the C., H. & D. of trackage rights over some 130 miles of its line, 70 miles of which was the section from Lima, Ohio, to Toledo, and the further grant of the use of all of its terminal facilities in Toledo and of those of the Pere Marquette in Detroit. These, it is quite obvious, gave to the Detroit, Toledo & Ironton much more than it could possibly return in its grant of rights over certain of its mileage and in its Ironton terminal.

In the light of the Ashland & Ironton Bridge and Great Central Dock transactions, and as a part thereof, it is inconceivable that it was intended that the C., H. & D. was to be the gainer by this trackage-terminal arrangement. It opened up its Toledo gateway to a rival road, a fact which of itself shows that the entire contract was merely a part of the general scheme. Presumably this was also the conclusion of the Erie management, for on November 29, 1905, the new executive committee rescinded the contract, and it was formally canceled on December 29, 1905. It is also of record that the final link in the chain had been forged for the Detroit, Toledo & Ironton in the form of a vote of approval on September 28, 1905, by the executive committee of the terminal company of a trackage contract whereby the use of the latter's facilities was granted. This not only gave further important connections in Toledo with other lines but passenger facilities as well, and in addition closed the gap between the Great Central Dock and the connection between the terminal company and the C., H. & D. reached under the contract with the latter. This arrangement was also made possible by the Hollins control of the principals concerned.

d. *Diversion of traffic to Detroit, Toledo & Ironton.*—On July 12, 1905, the following telegram was received by president Zimmerman of the C., H. & D. from a member of the Hollins firm:

> It is essential that for July and first two weeks of August you help Detroit, Toledo & Ironton with shipments from Superior. Answer about how many cars you can give them. There are special reasons which I can not telegraph which make it to the interest of the Cincinnati, Hamilton & Dayton that this help should be given to the Detroit, Toledo & Ironton.

The president of the C., H. & D. proceeded promptly and on the following day was able to advise that the Superior Coal Company would increase its shipments via the Detroit, Toledo & Ironton and that he had secured for that road one-half of the shipments of the Wellston Iron & Steel Company. One paragraph of his letter of advice reads as follows:

> I am also trying to arrange to control the entire business of the Wellston Iron & Steel Company for the C., H. & D. and D., T. & I., which would amount to about 450,000 tons a year in and out, and I am in hopes of more than doubling the business for the D., T. & I. in that section of the country, and the C., H. & D. will not lose any business.

e. *Detroit, Toledo & Ironton expansion project in general.*—A defense of these transactions on the ground that they were all family line affairs can not be admitted. The record shows that as early as the autumn of 1904 the Hollins firm had endeavored to negotiate a sale of C., H. & D. control to J. P. Morgan & Company. Many of the transactions under review were consummated after the sale of C., H. & D. control to the Erie had been arranged. And

finally it is apparent that the Hollins management knew that the C., H. & D. had been practically insolvent for many months prior to that sale. Evidently it was not intended to establish a community of interest as between the C., H. & D. and the Detroit, Toledo & Ironton. The inevitable conclusion on the record before us is that there was a deliberate plan to pluck the C., H. & D. for the benefit of the Detroit, Toledo & Ironton. The subsequent proceedings by the new management, as later described, might well have been carried beyond the mere exaction of restitution.

12. *Falsification of accounts during Zimmerman-Hollins control.*—The following statement presents a condensed income account covering the year ended June 30, 1905, for the C., H. & D., including its proprietary line, the Cincinnati, Indianapolis & Western, 1,038.24 miles operated, as recorded in the carrier's books of account:

Gross earnings from operation	$8,008,917.65	
Operating expenses	6,095,885.11	
Income from operation		$1,913,032.54
Taxes		316,061.12
Net income from operation		1,596,971.42
Income from other sources		59,688.65
Gross income		1,656,660.07
Deductions from gross income:		
Rents paid for lease of road	517,288.35	
Miscellaneous rents	372,273.11	
Interest accrued on funded debt	1,009,515.63	
Other deductions	348.52	
Total deduction from income		1,899,425.61
Net deficit		*242,765.54*

The 4 per cent preferred stock bore guaranteed dividends which makes the accrual of the dividend more in the nature of a fixed charge than a division of profits. If these dividends are so considered, the net deficit for the year was $251,969.20.

The foregoing income account bore little resemblance to the truth. The fact is that large sums properly chargeable to the income for 1905 were ordered to be charged to various other accounts and were so charged in a way to conceal the true state of the company's affairs. These entries violated commonly accepted accounting principles in such a flagrant manner as to make it evident that the purpose was to deliberately falsify the accounts in an effort to avoid showing the utter failure of the company to earn anywhere near its fixed charges.

The charges against the income of that year thus willfully omitted included interest on loans made to retire preferred stocks; interest

on bonds issued in part payment for Pere Marquette stock; overcharge claims, etc., settled in 1905 and properly chargeable against revenues for that year; certain items of operating expenses; lease rentals; trackage rentals; fees to fiscal agents; special legal fees, etc. Such items for the year under review aggregated $843,361.95, thus showing that the road fell at least $1,095,331.15 short of earning its fixed charges. An aggregate of $111,810 was charged to income during the year as representing dividends on the 5 per cent preferred stock, thereby making the gross deficit to be carried to profit and loss, $1,207,141.15. The operating expenses, to the omission of which reference has been made, constituted certain elements of cost in additions and betterment work. These, under the carrier's own accounting rules, should have been charged as maintenance, but were included in investment account. Later these items were included in the total cost of these improvements, as certified to the trustee, and bonds to the amount of $462,000 were allowed to issue against that total cost.

But what the Zimmerman-Hollins management accomplished along that line was little compared with what it attempted.

The refunding mortgage of the C., H. & D., dated July 1, 1904, provided for the reserve of $1,477,000 in par value of that series of bonds for capital expenditures. In January, 1905, the Zimmerman-Hollins management directed the preparation of a statement calculated to satisfy the conditions of the mortgage restricting the issuance of these bonds to the purpose stated. Vice president Harding's report on the matter to president Zimmerman stated:

> I have, on behalf of this company, purchased and contracted to purchase, acquire, and construct the property, additions, betterments, and improvements of, and upon the lines of railroad of this company, and for rolling stock and equipment, as follows:

The statement which followed contained items aggregating exactly $1,477,000. This report, however, did not satisfy the trustee under the mortgage. The result was the preparation of a new form of certification by counsel for the trustee, and this was of such a nature that a new statement of "betterments" made some months later covered expenditures which aggregated only $462,272.71, against which the trustee allowed $462,000 of bonds to issue, as stated above.

13. *Wind-up of affairs of C., H. & D. common-stock syndicate.*—We have earlier shown how the promoters finally succeeded in securing funds to make the payments on July 7, 1904, needed to secure control of the C., H. & D., and the formal action of their reorganized C., H. & D. board. As stated a 30 per cent call on the syndicate subscribers had brought in $2,437,500; advance payments of $617,500 were made

by the Commonwealth Trust Company and the terminal company on their subscriptions; $1,000,000 was realized from the sale of preferred stock; and the balance had been borrowed in two amounts, $2,500,000 and $175,000, a total of $6,730,000. At the same time the managers borrowed $100,000 for syndicate expenses from which they immediately voted themselves fees of $10,000 apiece. In accord with the terms of the vendors' agreement of May 28, 1904, the unpaid balance on the stock, $2,512,500, was covered by a 4 per cent one-year note. On October 10, 1904, after a 15 per cent call had been collected from the subscribers, not from Hollins & Company, a payment of $927,535.48 was made to the vendors on the principal of that note plus $26,520.83 of interest to date.

Also in the fall of 1904 the syndicate stock was deposited with the United States Mortgage & Trust Company as "depositary" under a voting trust agreement dated October 19, 1904, between that company; a "committee" composed of George W. Young, Eugene Zimmerman, Walter G. Oakman, Rafael R. Govin, George H. Norman, Frederick H. Prince, and Mark T. Cox; and the "depositors" of stock under the agreement. The first four members of the committee had been appointed by the syndicate managers and the last three by the Pere Marquette stockholders who had subscribed to the agreement with F. H. Prince & Company under which the Pere Marquette stock sold to the C., H. & D. had been assembled. One of the provisions of the voting trust agreement was that other C., H. & D. stockholders, either of common or preferred stock, might be admitted to participation thereunder.

To meet at maturity the balance due on the $2,512,500 syndicate note, before described, a 6 per cent call loan of $1,584,964.52 was negotiated from the Trust Company of America on July 6, 1905. It is worth noticing that at this time both Henry F. Shoemaker and H. B. Hollins were directors of that institution.

The total received by the trustee for the vendors was $9,298,262.25, including $73,068.14 of interest on notes and $176.11 of interest on deposits, which, except for $30,000 disbursed for trustee fees and other expenses, was paid to the following:

Henry F. Shoemaker	$3,549,203.82
J. P. Morgan & Co	2,547,773.79
Eugene Zimmerman	1,737,475.93
M. D. Woodford	978,575.23
Speyer & Co	232,974.48
Rush Taggart	215,251.52
Edith Grant	3,503.74
Noah H. Swayne	3,503.74
Total	9,268,262.25

The distribution was made in three payments. Several changes in the holdings of interest occurred between the first and second payments as shown below:

	At first payment.		At second and third payments.	
	Common.	Preferred.	Common.	Preferred.
Henry F. Shoemaker	22,793	6,400	22,209	6,400
J. P. Morgan & Co	20,286	.....	20,286	.....
Eugene Zimmerman	11,616	2,400	12,000	2,400
M. D. Woodford	7,000	900	7,000	900
Speyer & Co	1,855	.....	1,855	.....
Rush Taggart	1,450	300	1,450	300
Edith Grant	.....	.....	100	.....
Noah H. Swayne	.....	.....	100	.....
Total	65,000	10,000	65,000	10,000

Coming now to the accounts of the syndicate, it appears that the $2,500,000 loan matured on July 6, 1905, and was renewed by the United States Mortgage & Trust Company on a 6 per cent basis without commission. The participants in this renewal are shown in Appendix 11. The $1,584,964.52 note was paid the Trust Company of America on September 26, 1905, together with $21,661.18 of interest thereon, making the total cost to the syndicate of the 65,000 shares of common and 10,000 shares of preferred, $9,225,000 of principal and $94,747.32 of interest, or $9,319,747.32 in all. The records of the United States Mortgage & Trust Company with which these funds were deposited do not disclose the purposes for which certain other disbursements were made by the syndicate, and it has not been possible to ascertain the facts from other sources. It is known that a loss of $100,000 was suffered in the sale of the preferred stock, and the record also shows that interest and commissions on loans amounted to over $300,000. With fees to the syndicate managers, counsel fees, and other items, the expenses of the syndicate probably ran well toward $600,000.

In considering the matter of syndicate expenses mention should be made of certain items paid by the C., H. & D. to the United States Mortgage & Trust Company in October, 1904, for alleged services described as follows:

Depositary: Cincinnati, Hamilton & Dayton Co., preferred stock, $1,000,000:
Issue and transfer trust receipts $500
Depositary: Toledo Railway & Terminal bonds, $3,500,000:
Issue and transfer trust receipts 1,000
Depositary: Pere Marquette stock, $11,000,000:
Issue and transfer refunding bonds and collateral trust notes, C., H. & D 2,500
Depositary: Subscription to syndicate for purchase of stock of C., H. & D.:
Issue and subscription certificates 1,000

These items with others aggregated $20,000, and concerning them a witness representing the trust company said:

Well, I should say that some of those services were for the syndicate.

From the available records it has not been possible to determine the number of shares the beneficial interest in which was actually owned by H. B. Hollins & Company, but in winding up the syndicate large sums were paid in by that firm to liquidate the unpaid balance of principal and expenses due on the subscriptions controlled by them. The number of shares represented thereby, however, can not be fixed. The syndicate accounts with the United States Mortgage & Trust Company were closed on November 1, 1905.

Between September 12 and October 20, 1905, J. P. Morgan & Company, as recited in detail under the following subject, paid $11,218,000.37 to the Hollins firm, understood to represent 72,456 shares, of which 56,000 were bought for $160 per share and the balance at $135 per share, though this leaves some $36,000 unaccounted for. On account of the difficulties mentioned, and also because of the fact that Hollins & Company shared their profits with certain of the syndicate subscribers, it is not possible from this record to compute that firm's profits in this transaction, even approximately. That they were substantial, however, is evident. It is equally evident that the syndicate's obligations were paid and its profits distributed in the wind-up from the funds furnished through Morgan & Company, Hollins & Company here, as always, advancing nothing.

V. PURCHASE OF C., H. & D. CONTROL BY THE ERIE, AND RESCISSION THEREOF, 1905.

The acquisition of the C., H. & D. by the Erie was not a new subject in the minds of Erie officials and directors. It had been seriously considered at different times for several years prior to the actual purchase. The value of the C., H. & D. to the Erie from a traffic standpoint had been investigated and favorably reported, the southern connections through Cincinnati and western connections through Indianapolis being looked upon as of particular value. The section from Lima to Toledo, Ohio, was not considered as of major importance. In these researches, which apparently ceased early in 1904, the Pere Marquette was not considered at all.

According to the testimony of president Underwood of the Erie there were no negotiations carried on for this purchase by him or by anyone else on behalf of the Erie prior to an interview he had with J. P. Morgan at the latter's request on August 16, 1905, at which Morgan said:

When I was more active in the Erie than now, and during Mr. Coster's time, it was always thought that some time the C., H. & D. would become the property of the Erie. Now I have to say to you if that is still the intention of the Erie

board, and it is desirable on the part of the Erie company to acquire the C., H. & D., they will have to move quickly in the matter, for it is to be sold soon and there are other purchasers after it.

He then submitted a statement showing the condition of the C., H. & D., which was taken under advisement by president Underwood and his official staff, not the directors, and they decided that it was desirable to acquire the property. The president personally notified Morgan of that decision and, confirming this decision, on August 17 addressed a letter to Morgan in which he stated that the Erie had been furnished plans for grade reductions, etc., on its own line, which upon completion would enable the road to handle more traffic than was then tributary to it. He pointed out that it was the duty of the management to secure additional traffic on as favorable terms as possible, that the properties proposed to be acquired would largely increase Erie traffic, and that those properties were "worth more to the Erie than to any other interest on the map, and while the price is high there is no probability that it will ever be less." He predicted that in five years' time the increase in revenues from the haul of anthracite coal on the Erie and the sales thereof in the territory traversed by these lines and through their connections across Lake Michigan to the northwest would in itself go a long way toward paying the interest on the proposed investment. The concluding paragraphs of this letter are of such interest, in the light of subsequent developments, as to warrant reproduction here:

It seems to me that the matter will go by default if you do not take a strong hand, and I earnestly hope that you can see your way clear to make the purchase. If it be impossible at this moment to vest its ownership in the Erie, I trust that can be accomplished later.

In conclusion: I have seen no favorable geographical or traffic movements made toward the Erie by its competitors. The things that have been done in the interest of the Erie have been done by J. P. Morgan & Company, and it is to them that I feel we must look for such assistance as we are to have. I have written earnestly because I have a deep conviction that the proposed move is the move to make; the error is that it was not done before.

Up to this time, in fact up to October 20, 1905, the C., H. & D. annual report for the preceding fiscal year, ended June 30, had not been published. There was available, of course, the report of the Erie's traffic officials above referred to, which covered earlier years, including that ended June 30, 1903. This report was made by H. B. Chamberlain, third vice president and general traffic manager, and is dated May 23, 1904. It contains a general description of the property and traffic of the C., H. & D. and constituent lines, and a statement of its capitalization, earnings, etc. It is to be noted, however, that *only* the C., H. & D. was covered, and that the latest operating figures were for the year ending June 30, 1903. At this time, in

1905, it was not the C., H. & D. alone that the Erie undertook to purchase, but the C., H. & D., the Pere Marquette, the Chicago, Cincinnati & Louisville, and the terminal company, together with all accompanying obligations incurred by the new management as hereinbefore described. As to the Erie's investigation of the condition of affairs in 1905, president Underwood testified as follows:

Q. Was there no attempt made prior to the Erie taking upon itself the obligation to issue about $12,000,000 of securities to secure control of this road, to ascertain its actual financial and physical condition, except the perusal of a statement such as you have described?

A. That, I think, was all the research we would make. That would ordinarily be sufficient, if we had confidence in the man who presented the statement, and I certainly had the fullest confidence in Mr. Morgan's statement. I would have taken his word for it without a figure.

In answer to a question as to whether a statement of the C., H. & D.'s financial condition had been furnished J. P. Morgan & Company, the voluntary witness for that firm produced the statement contained herein as Appendix 15. He testified that he had found it among the firm's files on this subject, and that one of the partners told him it had been furnished the firm by H. B. Hollins & Company at the time of the purchase, and had been accepted as reflecting the true condition of the properties without any investigation whatever by either the Erie or the Morgan firm as to its accuracy or as to the true conditions then obtaining. The reliance placed on this document warrants a fuller consideration of it than would otherwise be accorded. It is undated and carries no indication of the period covered by the operating figures therein contained or of the office or party responsible for its preparation. The figures of operation cover the C., H. & D. and Pere Marquette only; the gross earnings are *estimated;* and the expenses are computed on a basis, also estimated, of 65 per cent of the estimated earnings of the C., H. & D., and 70 per cent of the Pere Marquette. According to these figures the net remaining after the payment of fixed charges would have been $692,663, which, if contingent interest charges of $499,620 were allowed for, would be reduced to the narrow margin of only $193,043 as the net from 3,400 miles of line. The statement contained no information to show whether the results of operation on the Chicago, Cincinnati & Louisville and the terminal company would make the so-called "contingent" interest charges actual or not.

Further, in connection with this financial statement on which such great reliance was placed, we must refer to an exchange of correspondence which occurred between August 15 and 24, 1905, concerning a certain statement then being prepared at the direction of the Hollins firm by president Zimmerman, and one copy of which eventu-

ally went to that firm and another to George W. Young. This statement is described in the correspondence as one showing "capitalization, fixed charges, estimated earnings, etc., of the C., H. & D. and P. M.," the figures for the Chicago, Cincinnati & Louisville to be omitted, and this description fits well the document placed in this record on behalf of J. P. Morgan & Company. It was prepared in and forwarded from Cincinnati by N. B. Hersloff, an employee of Hollins & Company, but evidently did not show as favorable results as were desired, for on August 24 the firm wired Zimmerman as follows:

> Better not have Young show statement you sent him; estimate earnings too poor; telegraph him in two separate telegrams, one not use statement sent him as you have another corrected one, and another telegram saying have not mailed statement because will bring on figures with me early next week.

President Underwood's remarks before the Erie board when he urged the purchase indicate that he had further knowledge of the situation than this statement revealed. As already said the latter showed a surplus from the operations of the properties, whereas president Underwood then spoke of the C., H. & D. system as only earning its fixed charges. This is indicated by the following excerpt from the minutes of the Erie board meeting:

> He (Mr. Underwood) recognized that the Cincinnati, Hamilton & Dayton system now is paying only its fixed charges, so that for the time being the purchase would involve an apparent annual loss of $500,000, but this loss would in the future disappear, and in the meantime the collateral advantages derived from the purchase would more than compensate for any proportion of the aforesaid loss.

Besides this the record shows that the Erie management was aware as early as the late summer of 1904 that the C., H. & D. had formed an entangling alliance, so far as the Erie was concerned, with the Pere Marquette, making the purchase undesirable. This dovetails into the testimony of George M. Cumming in the *Bradford Case*, *supra*, to the effect that in the autumn of 1904 negotiations were pending between Hollins & Company and J. P. Morgan & Company respecting a sale of the C., H. & D., and that he himself called on Charles Steele and Norman B. Ream, Erie directors, once or twice to give them information about that road and the Pere Marquette with a view to inducing the Morgan firm to buy the C., H. & D. stock. Charles Steele, in addition to being an Erie director, was a partner of J. P. Morgan & Company.

It must be remembered also that in 1901 J. P. Morgan & Company acquired 23,589 shares of C., H. & D. common and while 20,286 shares were sold to the syndicate in May, 1904, the last payment therefor was not made until July, 1905, and in addition the Morgan

firm held at least 1,603 shares at the time of the Erie purchase. During this period the firm had taken no part in the management of the property but with an investment of this magnitude it seems unlikely that it had lost all interest in and was ignorant of the financial conditions of the two properties. Furthermore it was directly in its line of business to know that the C., H. & D. had alone put out new funded obligations during the preceding year amounting to $26,170,000 in par thereby adding $1,136,400 annually to the fixed charges of that road, without considering at all the additional burdens on account of rental for the Pere Marquette and the joint liabilities of the two roads on account of the Chicago, Cincinnati & Louisville and the terminal company. It is also altogether unlikely that the Erie was ignorant of these increases in the capitalization of the C., H. & D. and of the consequent inability of that road to earn its fixed charges. In fact practically all the salient facts as to obligations issued and assumed had been published in financial papers some time before.

But it is unnecessary to gather up the straws which indicate that Morgan & Company and the Erie management knew what was commonly known in the world of railroad finance. The record shows clearly that a director of the Erie had been informed in detail of the critical financial condition of the C., H. & D.-Pere Marquette system some weeks before president Underwood's interview with J. P. Morgan, and further that this director communicated this information immediately to a member of the Morgan firm. To appreciate the force of these circumstances it is necessary to relate certain happenings leading up to them.

Newman Erb, formerly a lawyer and for many years a well-known figure in railroad finance in New York City and a practical railroad operating man, was a member of the Pere Marquette syndicate and very active in the formation of the C., H. & D. common-stock syndicate. He personally secured many of the larger subscriptions, was himself a subscriber, and in addition was one of the guarantors of notes of the syndicate for $275,000. It seems to have been the understanding that he was to have representation on the reorganized C., H. & D. board but when the syndicate assumed control on July 7, 1904, he found that he had been "frozen out." This he attributed to the stand he had taken when the price was being fixed by him and the other promoters for the Pere Marquette stock, he insisting that only $75 of that price should be placed on the C., H. & D. as a fixed interest-bearing obligation.

Soon afterwards, when the proposal came up to retire the preferred stock, he protested vigorously and threatened to enjoin such action. These protests culminated in his being practically bought out by

those opposed to his views, and he went abroad, returning in the spring of 1905. He found on his return that the system had become seriously involved financially, whereupon he wrote a letter dated July 3, 1905, to the managers of the C., H. & D. common-stock syndicate, protesting against the financial manipulations which had occurred and demanding that a call on the syndicate subscribers be made to pay off at least the $275,000 of notes on which he was one of the guarantors. In this letter he outlined the increases in fixed charges and accompanied it by a statement showing the obligations which occasioned such increases. No action being taken, he sent a second letter of protest to the syndicate managers, dated July 24. The outcome of this, so far as the syndicate was concerned, will be discussed later, the significant point now to be considered being that Newman Erb, having heard of the contemplated purchase by the Erie, arranged, by a letter dated July 25, 1905, for an interview with H. McK. Twombly, an Erie director and one who, as will be shown later, favored the purchase and "from his personal knowledge of the efforts of Messrs. J. P. Morgan & Company and of the difficulties overcome by them in obtaining the property" considered a commission of 3½ per cent to that firm quite reasonable and proper. This interview was had a few days later than the date of the letter, and from it Erb learned that while nothing definite had yet been done the Erie had been considering the purchase of the C., H. & D. system. He explained the conditions to Twombly and gave him copies of his letters of protest with the statement of increases in obligations. Twombly asked permission to show the papers to Charles Steele, a member of the firm of J. P. Morgan & Company, and upon receiving such permission he immediately arranged by telephone for an interview for that purpose, Erb accompanying him to the door of the Morgan office. The papers were ultimately returned to Erb without comment. They are now lodged in the files of the Pere Marquette and bear the notation in Erb's handwriting to the effect that they had been shown to Twombly with permission to show Steele.

In the face of all these circumstances it becomes necessary to look beyond the Morgan-Erie explanation of the reason for the purchase by the latter of the C., H. & D. It is to be found, in our opinion, in what was hinted at by a representative of the Morgan firm and bluntly acknowledged by president Underwood in testifying with regard to the effect produced by the rumor that the C., H. & D. was in danger of falling into other hands. Mr. Underwood said:

> It had an effect on me. I did not at that time want to see the C., H. & D. get into the hands of any interest that would divert its traffic from the Erie Railroad, and that was one of the prime factors that made us move when we did.

This fear that the C., H. & D. was about to fall into hostile hands was occasioned by the formation of a new syndicate by Newman Erb and others to take over those properties. It will be remembered that one of the conditions which H. B. Hollins & Company exacted before they would undertake the retirement of the C., H. & D. 5 per cent preferred stock was that the subscribers to the C., H. & D. common-stock syndicate should, among other things, give Hollins & Company an option till December 15, 1904, to purchase such subscription interests at a price equivalent to net cost to the subscribers plus 5 per cent interest, Hollins after such purchase to assume the individual subscriber's liability under the syndicate agreement. The Hollins firm thus really secured control of the C., H. & D. and allied properties without directly investing a dollar. This surrender of control without the investment of any capital was one of the matters to which Erb had objected most vigorously in connection with his opposition to the retirement of the preferred stock. These options were not exercised, but Hollins & Company otherwise purchased more than a majority of the subscription interests and became liable for all installments thereon called by the managers under the original syndicate agreement.

Erb's action in the summer of 1905, following his discovery of the bankrupt condition of these properties, has just been recited. In addition he found that the Hollins firm had failed to retire the $275,000 of demand notes as agreed, this, by the way, being the only cash expenditure they were expected to make when they were granted control. As an indorser on these notes, and being convinced of Hollins & Company's inability to carry out their undertakings, Erb, on July 5, 1905, demanded of the United States Mortgage & Trust Company, the holder of said notes, that it call the same immediately. To obtain funds to pay the notes the managers would be obliged to issue a call on the syndicate subscribers, forcing Hollins & Company to pay such call on the subscriptions taken over by them or default. In anticipation of such default and the return of the properties in their crippled condition to the old subscribers, Erb undertook the formation of a new syndicate to take over the 65,000 shares of C., H. & D. common. Sufficient subscriptions were obtained to make up the amount needed, and, while no formal agreement was executed, the matter was considered settled, and attorneys set to work to prepare the necessary papers. The subscribers as named in the documents accumulated by Erb on the subject were: Edwin Hawley, D. G. Reid, George W. Young, Newman Erb, John W. Gates, C. D. Simpson, —— Elwood, Harry S. Black, —— Hubbard, T. P. Shonts, Paul Morton, E. H. Huntington, —— Ray, —— Lambert, —— Watson, —— Warren, —— Kleybolte, F. H. Prince, W. A. Bradford, jr., W. L. Bull, and J. S. Bache & Co.

On July 20, 1905, the United States Mortgage & Trust Company notified the syndicate managers that payment of the $275,000 of notes was desired by August 21. Payment was not made on that date, and Erb and the other indorsers were called upon to make good their guaranties. A few days later, August 24, the syndicate managers issued a call for a 10 per cent installment on the subscriptions, payable by September 25, 1905.

Erb's new syndicate was completed early in September and made an offer, for the C., H. & D. stock, of $125 per share plus interest and expenses, equivalent to about $140 per share. It had become generally understood that the Hollins firm would be unable to carry out its purchase contracts, and the managers' call for 10 per cent on the subscriptions had precipitated matters. Negotiations finally reached a point where a decision was demanded and Hollins & Company asked for one more day. The following morning they announced the sale to J. P. Morgan & Company.

What had happened in the 24 hours meanwhile was that J. P. Morgan and H. B. Hollins had met at the former's New York residence on September 9, 1905, and closed an agreement for the purchase by Morgan of Hollins's C., H. & D. stock holdings, involving an expenditure of some $12,000,000. Francis Lynde Stetson was present as Morgan's counsel and wrote the agreement on a sheet of note paper. Its text follows and its significance will be further considered.

9 Sept. 1905.

219 MADISON AVENUE

H. B. Hollins & Co. will sell and J. P. Morgan & Co. will purchase 56,000 shares of C. H. & D. R. R. Co. Common Stock at the price of 160% with interest at the rate of 4½% per annum from December 7th, 1905, until date of delivery, all dividends to be credited against the interest and to J. P. Morgan & Co.

This delivery may be made by H. B. Hollins & Co. at any time, and must be made by them upon October 1st 1906, or at such time thereafter as shall be specified by J. P. Morgan & Co. by three months' notice in writing.

If so requested by H. B. Hollins & Co., J. P. Morgan & Co. will lend to them upon their obligations secured by C. H. & D. stock or syndicate subscriptions at 135% such sums as they may find necessary to carry such stock or subscriptions, to an aggregate amount not exceeding 56,000 shares, the rate of interest to be 4½%.

This contract and all obligations of J. P. Morgan & Co. may be terminated by them at any time after October 1, 1906x, by three months' notice in writing by J. P. Morgan & Co.

J. P. MORGAN & CO.
H. B. HOLLINS & CO.

x1906
H.B.H.
J.P.M.

*In addition we gave H. B. H. & Co. order to buy about 16,000 sh. participation ctfs. at about 135.

J. P. M.

*Pencil memorandum at bottom.

In working up this new syndicate it seems that all concerned were informed as to the true financial condition of the properties, so that it would appear to have been a difficult matter to induce subscribers to embark in the new venture. Even though certain of the obligations were recapitalized so as to reduce the fixed charges to the level of the earnings, as seems to have been proposed, the proposition would still seem to have been too uncertain to attract such substantial subscriptions as were needed. It may well be that the following sentence from Erb's letter of September 20, 1905, addressed to one of the original subscribing interests of May 19, 1904, suggests one, if not the underlying, purpose of this syndicate:

> Messrs. Edwin Hawley and John W. Gates were unimportant participants in this syndicate and their names were made use of, with J. Pierpont Morgan & Company, to create the impression that the property would go into speculative hands, and they have since stepped forward to take the property from Messrs. H. B. Hollins & Company, thus relieving the entire situation and to the satisfaction certainly of everybody in interest.

Whatever motive lay beneath the new syndicate scheme, there is no doubt as to the effect it had on the Erie management.

To continue now with the Morgan-Erie purchase it is significant that more than a month before any action whatever was taken in the matter by the Erie board or stockholders, president Underwood and his staff had decided to make the purchase, had announced that decision to J. P. Morgan, and had confirmed it by letter, as before stated. Furthermore, 11 days before the first action by the board, Morgan & Company had entered into the before-mentioned contract with H. B. Hollins & Company to purchase the stock and before that first meeting of the board had made two payments thereon aggregating some $386,000. This contract of September 9, 1905, provided for the purchase from the Hollins firm by Morgan & Company of 56,000 shares of C., H. & D. common stock at 160 with interest at 4½ per cent per annum from December 7, 1905, to date of delivery. It will be remembered that all of the C., H. & D. common stock represented water poured into the capitalization in the 1895 consolidation. Provisions were made for loans from Morgan & Company to the Hollins firm secured by the C., H. & D. stock at 135, and the contract was terminable by the buyer at any time after October 1, 1906, upon three months' written notice. A penciled notation thereon indicates that orders were also given the seller to acquire in addition about 16,000 shares represented by participation certificates at about 135. As indicated later, the Morgan firm acquired over 74,000 shares, although a much smaller number of shares would have secured control. The reason for acquiring such a large majority is not stated of record, but it is pertinent to note that in May, 1904, the Morgans had disposed of 20,286 out of 23,589 shares then owned by

them, leaving 3,303 shares in their hands. In the final trading the record shows that they sold 1,603 shares to the Erie at 135. Who else outside of the common-stock syndicate was also favored by being included in the sale to the Erie does not appear of record.

Finally, on September 20, 1905, a special meeting of the Erie board was called, at which there were present president Underwood and the following directors: Geo. F. Baker, J. J. Goodwin, Wm. C. Lane, J. G. McCullough, D. O. Mills, H. McK. Twombly, A. E. Orr, Norman B. Ream, L. L. Stanton, Francis Lynde Stetson, and Charles Steele. It must be remembered that the trade had already been made. This meeting, to use president Underwood's own language, was to "legitimatize" the transaction by the formal vote of the company's governing power. Necessarily, in view of the fact that the stamp of finality had already been put on the purchase, this meeting was purely perfunctory, and it is therefore of considerable interest to note to what lengths the several directors went in an effort to make of record plausible reasons in support of their votes to purchase the C., H. & D. We give here the substance of the minutes of that meeting.

Director Steele, a member of the Morgan firm, made an extended statement concerning the C., H. & D. system, including the Pere Marquette, and concerning also negotiations had with and through his firm to obtain control of that system for the Erie. These negotiations had been undertaken at the instance and request of the president and various directors of the Erie and as a result his firm had undertaken to acquire from H. B. Hollins & Company some 74,000 shares at approximately $160 per share. He also stated that his firm was willing to turn over the 1,603 shares owned by it at $135 per share and to accept as commission in the transaction 3½ per cent of the cost of the stock purchased from Hollins & Company or such lesser amount as the board should deem proper, "it being the wish of Messrs. J. P. Morgan & Company that the transaction should be disposed of by the board to its own satisfaction." Mr. Steele then withdrew from the meeting and took no further part in the proceedings.

Thereupon president Underwood made an extended statement to the board earnestly recommending the acquisition of this system as of very important value to the Erie and as necessary to its development. He stated that he recognized that the C., H. & D. system was *then* paying only its fixed charges, so that for the time being the purchase would involve an apparent annual loss of $500,000, but expressed the belief that this loss would disappear in the future, and that meanwhile "the collateral advantages derived from the purchase would more than compensate for any proportion of the aforesaid loss."

The recommendation was then discussed. Governor McCullough supported the president's statement "especially in the light of his experience in the early eighties when the Erie had very close relations with the Cincinnati, Hamilton & Dayton Railroad Company." Director Ream recommended the purchase seemingly on the ground that "if the Erie Railroad did not extend its system it might be considered that the company would soon have reached the limit of its growth." Mr. Twombly favored the purchase, and from his personal knowledge of the efforts of J. P. Morgan & Company and of the difficulties overcome by them in obtaining the property, thought that the compensation suggested by Mr. Steele was quite reasonable and proper.

It was then unanimously voted to authorize the president to contract with J. P. Morgan & Company to purchase approximately 74,000 shares of C., H. & D. common stock at the cost thereof to that firm (not exceeding $160 per share) plus a commission of 3½ per cent of such cost, except that $135 per share without commission was to be paid for 1,603 shares long since acquired by Morgan & Company. To provide funds for this purchase it was voted to issue $12,000,000 of the Erie Railroad Company's 4 per cent convertible gold bonds secured by its general mortgage dated April 1, 1903, convertible at par into common stock, at the rate of $60 per share any time after 2 and before 12 years from October 1, 1905. The Erie stockholders were to be granted the privilege ratably to subscribe for said bonds at par and accrued interest, payable in cash. The company's officers were authorized to enter into a contract with J. P. Morgan & Company, as managers of an underwriting syndicate, whereby the syndicate should be bound to take any and all of said bonds not taken by the stockholders and on account of such undertaking should be entitled to a commission of 2½ per cent on the entire issue of $12,000,000.

The stockholders ratified these acts on October 10, in which meeting Messrs. Steele and Ream declined to act as proxies, "because of their being interested in the transaction." It will be recalled that Mr. Ream urged and voted for the purchase in the directors' meeting on September 20, 1905.

The formal contract made by the Erie with J. P. Morgan & Company was dated September 27, 1905, and embodied the terms voted by the board. Morgan & Company's obligations to purchase C., H. & D. stock thereunder are stated to be "in behalf of the Erie Company." The purchase was actually consummated on October 20, on which date the Erie issued its 6 per cent notes due November 29, 1905, for an aggregate amount of $11,835,786.24, including $392,630.48 of commission to Morgan & Company, for 74,059 shares. These shares were deposited as collateral for the notes, which were drawn to the order of the following:

$3,000,000.00	First National Bank, New York.
2,000,000.00	National Bank of Commerce, New York.
1,000,000.00	United States Trust Co., New York.
5,835,786.24	J. P. Morgan & Co., New York.

On October 20, also, nominees of the Erie were elected directors and general officers of the C., H. & D.

It seems advisable to show at this point what the carriers in the system had actually accomplished during the fiscal year ending June 30, 1905, toward earning their fixed charges. As stated at page 156 herein, the C., H. & D. had a minimum deficit for the year of $1,095,331.15, making no allowance for the fact that because certain of the company's obligations were issued during the year, less than a full year's interest had accrued thereon. The results in 1905 on the other roads of the system were as follows: The Pere Marquette fell $22,430.48 short of earning its fixed charges; the Chicago, Cincinnati

& Louisville did not even earn enough to pay operating expenses, and, after allowing also for taxes and interest, had a deficit of $450,509.80 for the year; and on the terminal company, earnings were not sufficient to pay operating expenses, and, with fixed charges added, the deficit for the year amounted to $228,799.05.

The Erie, therefore, in buying the C., H. & D. was not buying a system which was "then paying only its fixed charges," as president Underwood had stated to his board, but a system which had fallen short of doing so in the year ended June 30, 1905, by over a million and three-quarters of dollars, and which in the full year following would have to provide for even greater fixed charges. It must also be remembered that this enormous deficit was not the only obligation which the Erie was undertaking; it had also to meet annual interest charges of nearly a half million of dollars on its own securities issued to raise funds for that purpose.

Not long after the purchase was consummated the Erie came to realize the enormity of the burden which had been assumed. A trip over the properties proved highly educational and before it was fairly started president Underwood learned so much of the condition of affairs that he abandoned the train and hastened back to New York. On June 30, 1905, the C., H. & D. proper had outstanding short term and demand obligations in the form of loans and bills payable aggregating over $2,300,000. In addition there was $1,009,000 due on audited accounts which were unpaid because of lack of funds, not to mention sundry bills held up and not even vouchered for the same reason. It was quickly seen that the C., H. & D. would be wholly unable to perform its obligations under its lease of the Pere Marquette; that neither the Chicago, Cincinnati & Louisville nor the terminal company was earning operating expenses and consequently their interest charges and more would have to be met; that $15,000,000 of C., H. & D. notes would mature in about three years; and that heavy interest charges would fall due in January with no funds to pay them.

To put it in the language of the Morgan witness before this Commission, who at that time, the fall of 1905, was general solicitor for the Pere Marquette and C., H. & D., the situation was very bad and a receiver was inevitable. On December 4, 1905, both companies were placed separately in the hands of Judson Harmon as receiver.

Just prior to this, however, on November 28, the Erie's notes falling due, its executive committee met and authorized the company's officers to execute new notes, due not later than January 15, 1906. This was done, the accrued interest on the old notes being added into the face of the new. Curiously enough, this increase of

$78,905.25 in the Erie's obligations was not entered on its books. The new notes were taken by the following:

First National Bank, New York	$3,000,000.00
National Bank of Commerce, New York	2,000,000.00
J. P. Morgan & Co., New York	6,914,691.48

At this same meeting of November 28, J. P. Morgan himself appeared and offered to take the C., H. & D. stock from the Erie at the price paid therefor by it, because he understood some dissatisfaction was felt and had been expressed with reference to the purchase effected by his firm as agents of the Erie. The committee unanimously voted to recommend to the board the acceptance of the offer, and the board did so accept on the following day. The board at the same time voted to deliver to J. P. Morgan a copy, "suitably engraved, under the corporate seal and signed by every director," of the resolution of thanks passed at the meeting for—

his extraordinary service and assistance to the company; first, in his quick and efficient compliance with the direct personal appeal of the company through its president to obtain for it a large majority of the common stock of the Cincinnati, Hamilton & Dayton Railway Company; and, finally, after the development of doubt in this board as to the continuing ability of the Erie Company satisfactorily to maintain and extend that system, in view of the demands of its own railroad, in his magnificent, unparalleled, and absolutely voluntary offer himself to assume the entire purchase, and to relieve the Erie Company from all contracts and cost in connection therewith.

There is a good deal more to this "offer" than appears on the Erie minutes. The parallel columns below show the attendance of Erie directors at the meeting of September 20, 1905, when the C., H. & D. purchase through J. P. Morgan & Company was formally authorized and the meeting of November 29, 1905, when the earlier action was rescinded. At each meeting the action of the board was unanimous with reference to C., H. & D. matters.

September 20, 1905.	*November 29, 1905.*
F. D. Underwood.	F. D. Underwood.
George F. Baker.	George F. Baker.
J. J. Goodwin.	J. J. Goodwin.
	W. P. Hamilton.
	E. H. Harriman.
Wm. C. Lane.	Wm. C. Lane.
J. G. McCullough.	J. G. McCullough.
D. O. Mills.	D. O. Mills.
A. E. Orr.	A. E. Orr.
Norman B. Ream.	Norman B. Ream.
L. L. Stanton.	L. L. Stanton.
Francis Lynde Stetson.	Francis Lynde Stetson.
Charles Steele.	
H. McK. Twombly.	

The directors present on September 20 and absent on November 29 were Charles Steele and H. McK. Twombly. The former as a member of the firm of J. P. Morgan & Company had made the proposition to the Erie board which resulted in the purchase of the C., H. & D. stock, and the latter had been the first of the directorate to recommend that purchase. Also, it was Twombly to whom Newman Erb had in July, 1905, given full information concerning C., H. & D. affairs, and it was Steele, as an Erie director and a member of the firm of Morgan & Company, to whom Twombly had carried that information.

The directors present on November 29 who had not been present and recorded in favor of the proposed purchase of the C., H. & D. on September 20 were W. P. Hamilton, a member of the Morgan firm, and E. H. Harriman. The former had been elected on October 10, 1905, to succeed Robert Bacon, who had resigned from the board on September 27, 1905. Seemingly the only new influence in the board on November 29, not present on September 20, was E. H. Harriman. That there is great significance in this fact is evident from the testimony of president Underwood to the effect that Harriman was one of his principal mentors in advising him to go to Morgan in an effort to free the Erie from this overwhelming burden. President Underwood said:

> Several days before the rescindation process was had, I talked with Mr. Harriman in his office in the Equitable Building. Now, I can not give you any idea where he had been in the interim, but I very distinctly remember my conversation with him. I could not forget it, nor you could not forget it, if you had heard it, about what was necessary to be done. He said "you made the trade with Mr. Morgan yourself. No one was present. You had better go and see Mr. Morgan, and you had better not depend on anyone else but yourself. It is up to you. You had better go and better go now."

President Underwood's reference to Harriman's whereabouts prior to their interview arose from a question as to the accuracy of a report that the Erie's purchase of the C., H. & D. had transpired during Harriman's absence from the country. This record does not settle this point definitely, but it does show that Harriman did not attend any meeting of the board or executive committee during the period July 26 to November 1, 1905. The record also clearly indicates Harriman's emphatic disapproval of the purchase upon his return in November, with the result that president Underwood obtained another interview with Morgan, as to which he testified as follows:

> Then I went down and had an audience with Mr. Morgan, and I told him that practically the C., H. & D. had a floating debt that was not visible and in the statement he showed me. He said: "Well, we will look at the statement," and there was some attempt made to find that statement, but it was

unsuccessful; it was not produced. I had not kept it because—well, I did not keep it. I said: "Mr. Morgan, the statement that I made to you of the effect of the acquisition of the C., H. & D. on the Erie's finances is null and void, because the statement was inaccurate." He looked at me and said: "Well, sir, if the statement that we made to you was inaccurate, and for any reason you think that the Erie Railroad has made a bad trade, your duty is very simple—you have only to convene your board of directors and rescind it, and I advise you to do it at once."

I bade him good afternoon and walked out of his office, and as I came out of his office I met Mr. Stetson, and I told him, being counsel, "Mr. Morgan has just authorized the rescinding of that trade, and I think it was a very unusual and extraordinary thing for him to do. I am surprised that he would do it. And I wonder if it would be bad taste for me to tell him that." He said: "He might like to hear it." So I went back, and Mr. Morgan was standing with a paper in his hand, and I said, "I would like to speak to you for a minute." He made no answer. I said again, "I would like to speak to you for a minute." I said, "I want to tell you I think you have done a very big thing, the biggest thing I ever came in contact with." He said nothing. I said, "Did you hear me?" He said, "I did, sir." And I walked out.

The freeing of the Erie from its purchase was formally accomplished through an agreement dated December 2, 1905, with J. P. Morgan whereby the Erie agreed to sell its C., H. & D. stock at the price paid under the purchase contract. While Morgan assumed this obligation personally, the firm paid for the stock and treated it as a firm matter without formal assignment from him. On January 15, 1906, the Erie received notice from the Morgan firm of the cancellation of its notes and the purchase of the stock at the cost of such cancellation, namely, $12,008,023.22, which sum included $54,165.08 of interest on the portion of notes held by that firm.

In conclusion on this subject there may well be quoted from the record Harriman's views thereon, as stated in his letter of thanks to Morgan, after the Erie had been freed from its purchase, as follows:

It was too great an undertaking for the Erie, and would have resulted, I fear, in disaster to it.

VI. MORGAN CONTROL OF C., H. & D., 1905–1909.

1. *Efforts to rehabilitate the C., H. & D. and Pere Marquette.*—The repurchase by Morgan & Company from the Erie of the C., H. & D. stock was promptly followed by action designed to save as much of the wrecked properties as possible. This was along four lines, as follows:

First. Rescission of corporate acts and contracts designed to pay additional unreasonable commissions to Prince and to transfer from the C., H. & D. to the Detroit, Toledo & Ironton valuable dock properties in Toledo, rights to trackage and terminal facilities, and rights and properties connected with the project to bridge the Ohio River at Ironton.

Second. Appointment of receivers.

Third. Rescission of the purchase of the Chicago, Cincinnati & Louisville and collateral transactions.

Fourth. Cancellation of the lease of the Pere Marquette to the C., H. & D., with a consequent adjustment of all controversies between them.

It is interesting to note that when the control thus returned to Morgan & Company very few changes were made in the directorates of the C., H. & D. and Pere Marquette, the Erie appointees for the most part remaining in office through the period of attempted rehabilitation to the sale to the Baltimore & Ohio in 1909. The important change in each board was that George W. Perkins, member of the Morgan firm, became a director of both roads on December 4, 1905.

The four salvage plans we shall now consider in the order named.

a. *Rescission of C., H. & D. contracts.*—On November 29, 1905, the day that the Erie board voted to accept the offer of Morgan to take back the C., H. & D., the executive committee of the latter road met at New York City, there being present Underwood, Baker, and Ream, all Erie directors. By unanimous vote a resolution was adopted which included the following preamble:

Whereas facts have been brought to the knowledge of this committee from which it appears that certain resolutions have been adopted or purport to have been adopted and certain contracts made or are claimed to have been made by certain directors and officers of this company who were interested in and with the other party to such alleged contracts and transactions which were and are prejudicial to the interests of this company, and were and are in the interest of such other party; and in order that the transactions in question may be fully investigated and steps taken to protect the interest of this company and its stockholders and to do what is right in the premises,

and which provided for the rescission of all resolutions passed and all action theretofore taken by the board or the executive committee: (1) Authorizing an agreement granting the Detroit, Toledo & Ironton the use of the railroad and terminals of the C., H. & D. system at Toledo, Detroit and other places; (2) selling, transferring or disposing of the stock or property of the Ashland & Ironton Bridge Company or of the Ohio River Construction Company, or of the Toledo & Ohio River Railway Company, or of the C., H. & D. rights in said companies except the transfer of the stock of the Ashland & Ironton Bridge Company to the Michigan Securities Company; (3) authorizing the transfer of the company's interest in the capital stock or property of the Great Central Dock Company; (4) authorizing the payment of a claim made by F. H. Prince & Company for alleged services rendered; (5) authorizing the making of an agreement with the Detroit, Toledo & Ironton respecting switching of cars at Wellston and to various coal mines in the vicinity of Wellston.

The first three of these subjects, and also the fifth, refer to various acts of the Hollins management looking to the expansion of the Detroit, Toledo & Ironton at the expense of the C., H. & D. Definite facts as to the fifth subject are not of record, but the first three have been already covered herein, *ante*, page 148. The fourth matter also has been detailed at length, see page 130, herein. As to each the acts of the Morgan management in the interest of the C., H. & D. are there related in full and need not be here repeated.

b. *Appointment of receivers, December 4, 1905.*—On December 4, 1905, Morgan & Company through an employee, Walter B. Horn, filed a bill of complaint in the circuit court of the United States for the southern district of Ohio against the C., H. & D., which resulted in the appointment of Judson Harmon as receiver on that day. At the same time he was also appointed receiver of the Pere Marquette. It is not essential at this point to give in detail the condition of those properties at that time or the specific matters on which the appointments were based, it being the intention now merely to record the action to show one of the important steps taken by the Morgan firm in its attempt to rehabilitate the roads. The results of the receiver's operation will be separately stated later.

c. *Rescission of purchase of Chicago, Cincinnati & Louisville.*—Another of the entanglements in the affairs of the C., H. & D. and Pere Marquette which was encountered by the Erie immediately after assuming control and which was of major importance in the Morgan program of rehabilitation concerned the obligations undertaken by these two roads incident to their purchase of control of the Chicago, Cincinnati & Louisville, on July 7, 1904. Just prior to the latter date, namely, on July 5, $3,500,000 of Pere Marquette bonds in temporary form were delivered to a representative of the trustee thereunder, the American Loan & Trust Company, of Boston, Mass., for completion by indorsement of its certification and for delivery to holders of Chicago, Cincinnati & Louisville stock who were depositing the same in exchange for such bonds. This arrangement had been required by the Chicago, Cincinnati & Louisville interests as a condition precedent to their payment of the first call on the $625,000 subscription to the C., H. & D. common-stock syndicate, made by George A. Fernald & Company, on behalf of Wm. A. Bradford, jr., the principal owner of the Chicago, Cincinnati & Louisville stock. According to the plan, these bonds were to be guaranteed by the C., H. & D., but though the guaranty had been formally authorized it was never actually indorsed on the bonds. Nor were the bonds ever written up as a liability on the books of the Pere Marquette, the comptroller of that company never having been notified of the execution and delivery thereof.

Another feature of the plan was a lease to the C., H. & D. of the Chicago, Cincinnati & Louisville mileage in Ohio and a grant of certain running rights over the latter's tracks in Indiana. While the operations were conducted by the C., H. & D. officials there seems to have been no prior formal execution of the lease agreement. Corporate action thereon was taken as late as July 10, 1905, by the executive committee, September 6, 1905, by the board, and October 10, 1905, by the stockholders. Delay also occurred in the substitution of joint C., H. & D.-Pere Marquette bonds for the original issue of Pere Marquette bonds. This delay extended over the option period provided in the original indenture, necessitating a supplemental agreement which was approved by the corporate authorities of the C., H. & D. on the dates just given. Here again it should be noted that the action by the C., H. & D. management and stockholders finally approving the lease and the joint bond issue was taken presumably in anticipation of transfer of control to the Erie. Significant also is the effect of the news of the Erie purchase upon the market for these bonds. The best price quoted up to this time on the bonds was 80, which according to Bradford, the principal beneficiary thereunder, was about the market value "before they (meaning evidently the Hollins crowd) began their system of high finance." Even at that price purchasers evidently were not found, for the record shows that as late as September 20, 1905, the firm of Rudolph Kleybolte & Company agreed to purchase from Bradford the entire issue of $3,500,000, exchangeable for the new joint bonds after proper ratification by the C., H. & D. stockholders at a meeting to be held on October 10, 1905. The price agreed to be paid, 95 and interest, was one which would be truly amazing were it not for the information that Bradford received a few days before from Steele, of the Morgan firm, that the C., H. & D. had been sold to the Erie.

The purchasers, Kleybolte & Company, had accepted and paid cash for 1,115 of these bonds up to the time the C., H. & D. was thrown into receivership, and further deliveries thereafter were impossible. The joint bonds were in process of execution when the completion and delivery thereof were stopped by the Erie management on November 6, 1905. On December 15, Bradford as president of the Chicago, Cincinnati & Louisville, addressed a letter to the C., H. & D. calling upon it to complete and deliver the joint bonds according to the contract for the purchase of the Chicago, Cincinnati & Louisville. This letter was brought before the C., H. & D. board on December 20, 1905, whereupon that body voted to rescind and annul any and all action or obligation theretofore taken by it in the acquisition of an interest in the Chicago, Cincinnati & Louisville;

to cancel all bonds or contracts executed or delivered in connection therewith; and to direct and authorize the officers of the company to take proper action for the protection of the company's interests in the premises. On the same day similar action was taken by the board of the Pere Marquette rescinding and annulling its contracts and obligations with respect to the Chicago, Cincinnati & Louisville.

As heretofore stated, one of the terms of the contract under which the Chicago, Cincinnati & Louisville stock was sold provided that the sellers should care for the interest on the Pere Marquette bonds received by them for their stock for one year beginning July 1, 1904. The six months' interest on these bonds which matured January 1, 1906, was defaulted and two actions at law were brought to recover the same, one by Rudolph Kleybolte & Company on January 24, 1906, to recover on 1,115 coupons and one by Wm. A. Bradford, jr., on February 1, 1906, to recover on 2,385 coupons. The Pere Marquette, having first obtained an order restraining the assignment of the bonds, etc., filed a bill in the circuit court of the United States for the western district of Michigan, praying that an injunction issue against the prosecution of the two suits, and also for rescission of the contract under which the Chicago, Cincinnati & Louisville stock was bought, and cancellation of the bonds issued in payment. In rendering his decision granting the preliminary injunction Judge Lurton, afterwards Mr. Justice Lurton of the Supreme Court of the United States, made this comment on the bill:

> Indeed, one can not read its averments without concluding, if the facts charged are true, that the case furnishes an example of the most pernicious methods of what has come popularly to be known as modern "high finance." *Pere Marquette R. Co.* v. *Bradford et al.*, 149 Fed., 492, at 493.

The testimony taken in these proceedings is now a part of the record before us. The litigation was settled out of court, the basis of settlement being the cancellation of all bonds; the annulment of all contracts and indentures bearing on the transactions; the return of the Chicago, Cincinnati & Louisville stock, 28,661 shares to Bradford and 13,399 shares to Kleybolte & Company; the payment to Bradford of $400,000 in the certificates of the receiver of the Pere Marquette; the cancellation of advances made to the Chicago, Cincinnati & Louisville to January 1, 1906, amounting to $423,009.34 by the Pere Marquette, and to $467,831.29 by the C., H. & D.; the discontinuance of all suits involved; and the grant to the Chicago, Cincinnati & Louisville of trackage rights over certain C., H. & D. terminal tracks at Cincinnati.

This settlement, however, in no way disposed of the claims which the Pere Marquette had against the C., H. & D., or vice versa, in

connection with any of the transactions involved. These were ultimately disposed of in the so-called Harmon-Crapo arbitration, to be next discussed.

d. *Rescission of Pere Marquette lease, leading to Harmon-Crapo arbitration.*—At their meeting on December 20, 1905, the C., H. & D. directors rescinded, revoked, and annulled every resolution and contract adopted or entered into, authorizing or purporting to authorize the lease of the railroads of the Pere Marquette, the minutes stating:

> Counsel having advised that such resolutions and contracts are in contravention of the laws of the state of Ohio, are beyond the corporate power of the company, and are illegal.

This was another step taken by the Morgan people in their effort to rehabilitate the properties, and one which required some time for its accomplishment. The company's officers were authorized to take proper action to put the resolution into effect, including the surrender of all property held under the lease and all capital stock of the Pere Marquette received in pursuance of the lease. It will be remembered that the C., H. & D. had, through the lease arrangement, acquired the ownership of 14,878 shares of Pere Marquette preferred stock, and 18,344½ shares of its common stock. This same resolution of December 20, 1905, requested receiver Harmon to apply to the court for authority to take proper action for the surrender of the rights of the C., H. & D. in such Pere Marquette property and stock.

Subsequently, on August 21, 1907, the board authorized the execution of an arbitration agreement on behalf of the C., H. & D. between that road, the Pere Marquette, and a committee consisting of Nathaniel Thayer, William W. Crapo, Mark T. Cox, George H. Norman, and Francis R. Hart, which then controlled certain Pere Marquette stock. This agreement contemplated an arbitration of the claims asserted by each carrier against the other under the lease, "and for divers other causes and reasons." The original agreement is missing, but the draft authorized shows quite clearly that one reason for the step taken was to assist the Pere Marquette out of its receivership through a reorganization then under way, which contemplated the use by the Pere Marquette of its treasury stock, which had been acquired by the C., H. & D. under the lease, as a bonus to induce subscriptions for Pere Marquette 6 per cent debentures, of which $5,000,000 were to be issued under the Morgan reorganization plan.

By this agreement W. W. Crapo, long a prominent figure in the old Flint & Pere Marquette, and Judson Harmon, then receiver of both the C., H. & D. and Pere Marquette, were named as arbitrators, to whom both roads agreed to submit "every claim of

every kind and nature which they may now have, one against the other, whether arising from or under the said contract and the said lease or otherwise," for arbitration and settlement, and both roads agreed in advance to accept the result of the arbitration. It was made mandatory upon the arbitrators that they should adjudge the contract and lease terminated and canceled from and after a date to be fixed by them. This agreement also required the C., H. & D. to turn over to the Pere Marquette the 14,878 shares of the latter's preferred and the 18,344½ shares of its common stock, then held in the C., H. & D. treasury. Further, the C., H. & D. agreed that all Pere Marquette stock which it, the C., H. & D., had the right to vote should be voted in favor of the proposed reorganization. This entire agreement for arbitration was ratified by the C., H. & D. stockholders on October 8, 1907.

The finding and award of the arbitrators, dated April 30, 1908, was presented to the United States circuit court for the southern district of Ohio on that day. The arbitrators adjudged that under the following conditions the Pere Marquette lease to the C., H. & D. should be terminated and canceled as of December 4, 1905, which was the day both lines went into the receiver's hands: (*a*) The Pere Marquette was to receive from the C., H. & D. the sum of $1,364,387 in full settlement of all claims, each road against the other; and (*b*) the title of the Pere Marquette to its portion of certain equipment included in the Kleybolte equipment trust of April 1, 1905, was to be secured to it through the carrying out of stipulations signed by counsel for both carriers and made a part of the award. The Pere Marquette assumed the portion of the unpaid equipment notes of the C., H. & D. so far as the same represented such equipment, it having previously paid its proportion of said notes as they serially matured.

The then general counsel of the Pere Marquette testified in this investigation that he had made prominent before the arbitrators the claim of his company against the C., H. & D. for substantial loss on account of the purchase of terminal company stock. He stated that while it was not clear from the award just how the sum awarded the Pere Marquette had been reached he had always believed that it had been based largely, if not entirely, on this terminal company stock transaction, "for there was no other theory upon which they could reach that sum or approximately that sum." Attention is called to the recital of the arbitrators in the award that—

> The purchase of the entire capital stock of the Toledo Railway & Terminal Company was made in fact for the common benefit of both the C., H. & D. and the Pere Marquette, bonds of the latter to the amount of $1,645,000 having been issued in payment therefor. Said stock was, when so bought, worth much less than the price paid therefor.

As stated, the award was dated April 30, 1908. A proper entry was prepared by the accounting department of the C., H. & D. on July 30 to record its obligation in consequence thereof, but it was not then made. Why this large obligation was not then recorded does not appear, but its omission from the C., H. & D. accounts was upon the advice of general solicitor Frederick W. Stevens and director George W. Perkins. The representative of the Baltimore & Ohio who was investigating C., H. & D. finances in the summer of 1908 included the $1,364,387 in his list of exceptions to the profit and loss account of the latter road, meaning thereby that it should then have been charged to that account. This debt was not entered in the C., H. & D. accounts until August, 1909, when it was immediately canceled on account of the satisfaction thereof through the issuance to the Pere Marquette of $1,364,000 par value of new C., H. & D. general mortgage bonds which were being put out as a part of the readjustment incident to the Baltimore & Ohio purchase.

On the Pere Marquette books the first entry on account of the C., H. & D.'s debt under the arbitrators' award was made in August, 1909, when the $1,364,000 of C., H. & D. general mortgage bonds were written into the assets at a nominal value of $1. The acceptance of these bonds in satisfaction of the debt of the C., H. & D. had been approved by the Pere Marquette board on August 3, 1909. In June, 1910, the book value of these bonds was increased to $818,400, or 60 per cent of the face value, as fixed by the board of directors at a meeting on April 14, 1910.

2. *Issuance of purchase money collateral trust notes.*—We have stated in connection with the rescission of the Pere Marquette lease that to aid the reorganization of that company the arbitration agreement of August 12, 1907, required the surrender by the C., H. & D. of the 14,878 shares of Pere Marquette preferred stock and 18,344½ shares of its common which had been acquired by the lessee under the terms of the lease, and further required the C., H. & D. to vote the other Pere Marquette stock held by it in favor of the reorganization. When application was made to secure the proper authority to vote that stock, 110,000 shares, unexpected opposition was encountered from the committee of the holders of C., H. & D. refunding mortgage bonds under which the stock was pledged. This committee had been formed under the terms of an agreement dated December 9, 1905, only a few days after the receivers of the two roads had been appointed. It was composed of James N. Wallace, president of the Central Trust Company, Frederick Strauss, a partner in the firm of J. & W. Seligman & Company, and Mark T. Cox, head of the firm of Robert Winthrop & Company. They

had failed to get desired information from the receiver concerning the condition of the properties, and when the request came for their consent to vote the stock pledged under their bonds they refused it. In the words of Mr. Strauss—

> We realized that it was the only opportunity that we had for compelling the junior interests, who were playing a waiting game, to meet us openly and frankly and to tell us of their plans.

Prolonged negotiations ensued, principally with George W. Perkins, of Morgan & Company, and there finally resulted a settlement expressed in an agreement dated December 6, 1907. There were then $11,307,000 of these bonds outstanding. Under this the committee were to vote their stock in favor of the reorganization, providing the C., H. & D., with the consent of Morgan & Company, agreed to purchase the refunding bonds by exchanging therefor at par new 5½-year notes bearing the same rate of interest and secured by the refunding bonds received in exchange. These notes also were to be redeemable at par on any half-yearly interest day on 60 days' notice, and one of the events of default was to be a default on the $5,000,000 of Pere Marquette debentures to be issued in the proposed reorganization of that road. The refunding mortgage was to be closed except for the issuance of bonds required thereunder for the refunding of prior bonds maturing before July 1, 1913. The C., H. & D. also agreed to provide a supplementary mortgage under which the refunding bonds thus pledged should mature on July 1, 1913, or should earlier become due if the notes became due through the happening of any of the named events of default. This settlement agreement, as well as the supplement to the refunding mortgage and the indenture underlying the new notes, both dated January 1, 1908, were approved by the board on December 30, 1907, and by the stockholders on February 7, 1908.

The advantage gained by the old bondholders was that the new arrangement gave them the strategical position in any reorganization of holding 5½-year notes instead of 50-year bonds, and this was practically the only advantage gained by them in the exchange. The subsequent history of these notes, including their guaranty by the Baltimore & Ohio, forms a part of the story of the readjustment of 1909 based on the purchase of C., H. & D. control by the Baltimore & Ohio.

VII. THE RECEIVER'S ADMINISTRATION, 1905–1909.

On June 30, 1904, just before the exploitation period began, the outstanding capital stock of the C., H. & D. was $15,991,300, consisting of 79,996 shares common and 79,917 shares preferred, and the

funded debt was $12,345,848. During the following year fixed interest-bearing obligations were added as follows:

Equipment trust notes, 4½ per cent	$2,920,000
Refunding mortgage bonds, 4 per cent	8,250,000
Collateral trust notes, 4½ per cent (maturing Sept. 1, 1908)	15,000,000
Total	26,170,000

This created an annual increase of $1,136,400 in the fixed charges, decreasing slightly as each partial payment of the equipment trust notes was made. True, the dividend on the bulk of the 5 per cent preferred stock was eliminated, but as this dividend had not been cumulative it can not be looked upon as a fixed charge. A small increase in the fixed charges had been occasioned also by the retirement of the 4 per cent guaranteed preferred stock through the sale, at a discount, of 4 per cent bonds of a subsidiary company, which were owned by the C., H. & D.

Another serious menace to the road's stability was the increase in that same year to June 30, 1905, from $17,000 to a total of $2,312,627.03 in loans and bills payable. The receiver, when he assumed control on December 4, 1905, faced large accumulations of vouchers which could not be sent out to payees because of lack of funds, and large accumulations of bills which for the same reason had not even been vouchered.

During the 3½ years of the receiver's administration about $1,000,000 of equipment notes were paid off. Loans and bills payable increased to an aggregate of $3,165,294.79 on June 30, 1909, audited accounts and wages payable increased to $1,884,168.80, and 6 per cent receiver's certificates were put out amounting to $1,127,128, of which $955,298 were still outstanding on the date named. Of the receiver's certificates, $103,468 had been issued to purchase 10 switch engines and the balance, $1,023,660, for the payment of funded debt interest maturing on January 1 and July 1, 1906. The $15,000,000 of collateral trust notes matured September 1, 1908, interest thereon having been defaulted since March 1, 1906. The interest on other C., H. & D. bonds was defaulted as follows: July 1, 1908, on the 4 per cent purchase money notes and the 4 per cent refunding mortgage bonds; October 1, 1908, on the Cincinnati, Dayton & Chicago bonds; and November 1, 1908, on the Cincinnati, Dayton & Ironton bonds. Among the proprietary lines defaults occurred as follows: July 1, 1908, on the 4 per cent Cincinnati, Indianapolis & Western bonds and the 5 per cent Indiana, Decatur & Western bonds; and November 1, 1908, on the 4 per cent Cincinnati, Findlay & Fort Wayne bonds.

The statement inserted below shows a condensed income account of the C., H. & D. for the fiscal years ending June 30, 1906 to 1909,

inclusive. The receiver was appointed December 4, 1905, so that the property was under his control for only about seven months of the fiscal year 1906. On account of the promulgation, effective July 1, 1907, of a uniform system of accounts by this Commission, certain items in this statement for the first two years are not exactly comparable with like figures for the last two years, and it should also be explained that the apparent decrease in funded debt interest for 1909 is due to the maturity on September 1, 1908, of the $15,000,000 of collateral trust notes. This required the classification in this statement of the $562,500 interest thereon which was accrued on the books after that date as "other deductions."

Item.	Year ended June 30, 1906.		Year ended June 30, 1907.		Year ended June 30, 1908.		Year ended June 30, 1909.		Total 1906-1909.	
Gross earnings from operation	$8,398,417.96		$9,071,374.69		$7,960,612.41		$7,897,047.87		$33,327,452.93	
Operating expenses	6,616,227.10		7,085,266.24		6,797,197.34		6,501,593.66		27,000,284.34	
Income from operation		$1,782,190.86		$1,986,108.45		$1,163,415.07		$1,395,454.21		$6,327,168.59
Taxes		492,294.78		279,457.83		302,013.04		306,002.07		1,379,767.72
Net deficit, auxiliary operations		.....		.....		*13,985.77*		.....		*13,985.77*
Railway operating income		1,289,896.08		1,706,650.62		847,436.26		1,089,452.14		4,933,435.10
Income from other sources		138,170.05		125,545.90		313,687.06		116,341.39		693,744.40
Gross income		1,428,066.13		1,832,196.52		1,161,123.32		1,205,793.53		5,627,179.50
Deductions from gross income:										
Rents paid for lease of road	324,367.80		324,368.28		324,368.30		324,368.21		1,297,472.59	
Interest accrued on funded debt	1,754,090.56		1,779,044.43		1,766,514.61		1,184,394.95		6,484,044.55	
Other deductions	702,008.88		590,137.66		744,142.70		1,388,952.15		3,425,241.39	
Total deductions from income		2,780,467.24		2,693,550.37		2,835,025.61		2,897,715.31		11,206,758.53
Net deficit		*1,352,401.11*		*861,353.85*		*1,673,902.29*		*1,691,921.78*		*5,579,579.03*
Dividends on preferred stock		5,150.00		.....		.....		.....		5,150.00
Deficit carried to profit and loss		*1,357,551.11*		*861,353.85*		*1,673,902.29*		*1,691,921.78*		*5,584,729.03*
Mileage operated (single track) on June 30		1,038.24		1,037.80		1,037.80		1,036.05		

Further, in connection with the foregoing statement, although the lease of the Pere Marquette was not formally broken until April, 1908, there was no accrual of rental written on the books of the C., H. & D. subsequent to November, 1905, and that written up for July to November was subsequently canceled. So that the gross deficit of $5,584,729.03 for the four years represents the results on the same property operated under much the same conditions as those obtaining when the Baltimore & Ohio undertook to make it pay, the chief difference being in capitalization, due, as will be afterwards explained, to the readjustment of 1909.

The breaking of the Pere Marquette lease with the attending settlement of all claims of the two parties thereunder, one against the other; the freeing of the C., H. & D. from the entangling obligations involved in the purchase of the Chicago, Cincinnati & Louisville; and the recovery of the Toledo dock property and Ashland & Ironton bridge property from the Detroit, Toledo & Ironton, together with the recission of the trackage and terminal contract with that road, were all accomplished by the Morgan control during the receiver's administration, as already recited herein.

VIII. PURCHASE OF CONTROL BY BALTIMORE & OHIO AND READJUSTMENT OF C., H. & D. FINANCES, 1909.

The entire plan of 1909 for readjusting the finances of the C., H. & D., paying off its defaulted interest and floating debt, releasing the road from the receivership, and providing working capital and funds for necessary improvements, all without foreclosure, was predicated on the sale of 74,097 shares of the common stock of that company by Morgan & Company to the Baltimore & Ohio Railroad Company. As previously indicated herein this block of stock represented an actual voting control of the corporation, there being only 5,899 additional shares of that issue outstanding besides a relatively small amount of preferred stock. At this point it may be said again that as a result of the 1895 consolidation by which the company was formed the entire issue of common stock represented mere bonus. On behalf of Morgan & Company it was testified that during the period of the negotiations for the sale and up to the time thereof, Morgan & Company were not in any way interested in the Baltimore & Ohio, owned no stock of that carrier, and had no representation on its board of directors.

In connection with *The Five Per Cent Case*, *supra*, this Commission requested Daniel Willard, the president of the Baltimore & Ohio, to furnish the facts as to the financial history of the C., H. & D. and its relation to the Baltimore & Ohio. This was done, and he presented his statement at a hearing on May 29, 1914, his testimony and exhibits pertaining thereto being made a part

of the record of this investigation. His recital of the acquisition and exercise of control over the C., H. & D. began with the proceedings of the Baltimore & Ohio board at its meeting on February 5, 1909, at which a proposal of sale was presented from Morgan & Company, further facts as to which will later be given.

The question of acquiring C., H. & D. control had been under consideration at various times since 1899, and was actively taken up by the Baltimore & Ohio almost eight months prior to the meeting of February 5, 1909. The record before us shows that on June 26, 1908, Oscar G. Murray, then president of the Baltimore & Ohio, addressed a letter to George W. Perkins, of the firm of Morgan & Company, introducing Major H. D. Bulkley, comptroller of the Baltimore & Ohio, as its confidential representative in the matter, and requesting that instructions be given for "the exhibition to him of all data that pertains to the situation." Major Bulkley made an extensive examination of the C., H. & D.'s affairs and finances, being furnished a large amount of information by J. L. Cramer, then comptroller of the C., H. & D. Under date of July 31, 1908, he rendered a voluminous report to president Murray, which was finally secured for this record.

The Bulkley report consists of the general balance sheet of the C., H. & D. for April 30, 1908, as prepared by that company and as revised by Major Bulkley, an income statement made comparative by years back to 1898, analyses of mortgages underlying the funded debt, analyses of leases, a statement of mileage, and schedules of supporting details. It shows that including estimated figures for June, 1908, the road would fail to earn its fixed charges in the year ending with that month by over $1,737,000, and that the results for 1906 and 1907 were deficits of $1,147,630.70[1] and $861,353.85, respectively. The balance sheet showed cash on hand as $43,264.47; amounts due from agents and conductors, $362,127.07; and net traffic balances due, $257,452.99; against which were the following current liabilities: Accounts payable for current expenditures, $1,911,267.60; pay rolls and unclaimed wages, $265,675.59; bills payable, $50,000; call loans, $3,030,294.79; matured interest unpaid, $1,690,142.50 net; and interest, taxes, and rentals accrued but not due, $980,576.12. Particular attention was directed in Bulkley's report to the coming maturity on July 1, 1913, of the purchase money notes, $10,004,000 then being outstanding of the $11,557,000 to be issued, and mention was also made of the maturity on January 1, 1911, of $2,728,000 of bonds of the Dayton & Michigan, a C., H. & D. subsidiary. It was pointed out that annual installments on equipment trusts amounted to

[1] Difference between this amount and the deficit shown in the statement on page 184 can not be accounted for.

$223,256.44, and the following very significant statement was made respecting the road's equipment:

> Incidentally I learn that a large number of freight cars are very old and have little more than a scrap value. An actual inventory and revaluation, on the basis of age, condition, and earning power, would, in my judgment, be the only means of ascertaining the true value, and I earnestly recommend that this be done.

The representative of the Baltimore & Ohio also found and reported that large amounts were being carried in the company's asset accounts which properly should have been charged off to operation or against income, and he adjusted the profit and loss account accordingly. His inclusion therein of such items and certain uncollectible assets, together with the $1,364,387 due the Pere Marquette on account of the Harmon-Crapo arbitration award, increased the company's deficit from $595,567.19, as carried on the books, to $6,221,646.69. Major Bulkley's concluding statement was as follows:

> 'Owing to the condition of railway affairs throughout the entire country and the complicated status of the C., H. & D. financial matters, I refrain from making any comment on the earning power of the system or suggestion as to the reorganization. From the facts presented in this report it will be readily seen that it is a bankrupt concern and will require drastic treatment to enable it to earn a fair interest on the capital invested.

If any further investigation was made by the Baltimore & Ohio management of C., H. & D. affairs, we have not been informed of it. The next action, according to this record, was that taken by the board of directors on February 5, 1909, when president Murray presented the above-mentioned proposal from J. P. Morgan & Company.

This proposal expressed the belief that after June 30, 1910, the net earnings of the C., H. & D. available for rentals, taxes, and fixed charges would be $3,000,000 annually, it being anticipated that by that time the rehabilitation of the property, costing about $4,500,000, would have been completed, and certain readjustments made with connecting lines, etc., which would yield an estimated net of $725,000, of which $450,000 could be counted on with reasonable certainty. On this basis the road could pay all of its fixed charges, including those involved in the proposed readjustment of its finances, and have a net income of $192,000 remaining annually. It is noteworthy that these estimates did not include any allowance for interest on the $15,000,000 of collateral trust notes, as it was thought that such notes and certain floating debt could be covered by an issue of $20,000,000 of new income or second mortgage bonds which the Baltimore & Ohio would not be required to guarantee, and on which the payment of interest could be deferred for a considerable time.

Another feature of the Morgan proposal involved a new series of C., H. & D. refunding bonds, of which $12,500,000 were to be issued

immediately, $5,500,000 thereof for receiver's and other cash obligations, $5,000,000 for expenditures on the property, and $2,000,000 for working capital. The Baltimore & Ohio was to guarantee the principal and interest of these $12,500,000 of new bonds and also of $11,500,000 of notes then outstanding, due July 1, 1913. It was expected that all the debts and obligations of the C., H. & D. could thus be met and the property delivered free from all entanglements without it being necessary for the Baltimore & Ohio to make any immediate outlay of cash, either in connection with the readjustment of C., H. & D. finances or in the purchase of its stock.

Under the Morgan proposal, also, the C., H. & D. stock was to be put in a voting trust, with three trustees, one chosen by the sellers, one by the Baltimore & Ohio, and the third by these two. The Baltimore & Ohio was to be given the right to purchase the stock at any time prior to January 1, 1915, at its cost to Morgan & Company as of January 15, 1906. If this option was not exercised the Baltimore & Ohio was to agree to buy the entire holding on January 1, 1915, at a price to be then agreed upon between the Baltimore & Ohio and the sellers or, in case of disagreement, at a price to be then fixed by arbitration. It was pointed out that the gross earnings of the Baltimore & Ohio would probably be increased by $750,000 per annum, of which about one-half would be net, and that the control of the C., H. & D. would carry also a working control of the Pere Marquette Railroad and an important interest in the Cincinnati, New Orleans & Texas Pacific Railway Company, the latter through the Southwestern Construction Company.

The Baltimore & Ohio board voted to refer the whole matter to a committee of five which was to be appointed by the president, he to be one and chairman, and which was to report conclusions and recommendations to the board. The committee was composed of Oscar G. Murray, chairman, Samuel Rea, Joseph Wood, Norman B. Ream, and L. F. Loree, and rendered a report dated 11 days after its appointment, at a board meeting on February 18, 1909.

In this committee report the proposal from Morgan & Company was again outlined, substantially as above. It stated with reference to the proposed issue of $20,000,000 of income bonds that they were to be made a straight income bond, if possible, but that it might be necessary to name a date when fixed interest would commence to run. The committee expressed the hope that the fixed interest would start at a rate as low as 1 per cent some years thereafter and not reach the full 4 per cent or 4½ per cent until about 10 years. The report also stated that the Baltimore & Ohio should have the right to administer and operate the C., H. & D., the voting trustees being obligated to vote for a majority of the directors as nominated by the Baltimore & Ohio,

one of such nominees to be elected president. A forecast as to the probable results of operation for the years ended June 30, 1910 to 1915, inclusive, was made by the committee, "in order to ascertain whether this may eventuate as profitable on behalf of the Baltimore & Ohio, and whether it can be made a self-sustaining property."

The committee's forecast started with $9,000,000 as the estimated gross revenues for 1910, and assumed that the average increase each year thereafter would be 6 per cent of the gross of the respective previous year. It also assumed that in 1910 and 1911 the C., H. & D. could not be operated on a ratio of less than 75 per cent, but that thereafter it could be operated for 70 per cent on account of improvements in facilities and "improved management." Because the hire of equipment balance for the first six months of 1909 had shown a charge of $39,000 as against a credit balance of $160,000 which it was thought might reasonably be expected in a normal year, the committee allowed an income credit of $60,000 annually on account of that item. Taxes were estimated for the full six-year period at $300,000 per annum, the approximate accruals in 1908 and 1909, and no allowance was made for interest at any time during the six years on the proposed $20,000,000 of new income bonds.

This committee's forecast, stated in its report to be on "conservative lines," reached the conclusion that, while there would be a deficit on the C., H. & D. in 1910 and 1911 of some $970,000, the surplus of the four succeeding years would be such that there would remain $870,000 net surplus from the business of the six years, 1910 to 1915, or an average of $144,950 per year. The report pointed out that before any of the profit became available as dividends on the stock, some interest probably would have to be provided on the proposed income bonds. The committee also believed that various changed conditions of operation and traffic might result in increased net earnings of $625,000 per annum, of which $300,000 might be expected to materialize. It was also stated that the officers of the Baltimore & Ohio, after careful consideration, estimated that the gross revenue of their system would be increased by from $750,000 to $1,500,000 by making the C., H. & D. a part thereof and that 60 per cent of such increase would be profit. The committee estimated this "conservatively" at $1,000,000 in gross, with a profit of 50 per cent, or $500,000.

The report of the committee was summed up in the following paragraph:

> It seems reasonable on these bases that at the end of the six-year period the company will, in addition to adequately maintaining the railroad, its equipment, and facilities, be earning sufficient to meet all its charges, provide additions and betterments, and begin a moderate return on the income bonds.

The consequent acquisition of interest in the Pere Marquette, in the Queen & Crescent route, and in the terminal company, was treated of, and the report further states:

> It has been recognized for many years that the property would be a valuable acquisition to the Baltimore & Ohio system, and owing to the peculiar circumstances now surrounding the ownership of the stock, it is doubtful if there will again occur an opportunity for its acquisition on as favorable terms, because if it is not taken now the bankers will be forced to reorganize and run it as best they can, whereas if purchase is made as now proposed, then for the term of the agreement the Baltimore & Ohio will have as active agents and partners the influential house of J. P. Morgan & Company, making every effort to effectuate a reorganization on the most conservative basis, and endeavoring to increase the revenues of the company to make their stock as valuable as possible.

The committee expressed the opinion that it would be wise for the Baltimore & Ohio to acquire control of the C., H. & D. in view of the conservative showing and—

> in view of the anticipated injurious effect on the Baltimore & Ohio system if this property should be carried by others through this period, and then acquired by other railroad interests running to the seaboard.

and recommended that the company take steps toward entering into an agreement with Morgan & Company substantially as outlined in the report.

After "full discussion," as the minutes put it, the president and directors unanimously resolved that the report of the committee be accepted, that the committee be continued, and that the president be authorized to negotiate with J. P. Morgan & Company an agreement generally as outlined in the committee's report, and submit the same to the board.

The absence from the committee report and from the Bulkley report of any but general comments respecting the Pere Marquette would lead to the conclusion that no investigation of that company's condition and affairs was made by the Baltimore & Ohio prior to its purchase of the C., H. & D. This conclusion, surprising as it is in view of the fact that the C., H. & D.'s investment in the Pere Marquette was certainly as great as the Baltimore & Ohio's proposed investment in the C., H. & D., was confirmed by Oscar G. Murray who, testifying before this Commission, stated again and again that the interest of the Baltimore & Ohio lay wholly in the C., H. & D., and that that company's affairs alone were looked into. He further stated that the Baltimore & Ohio committee thought it desirable that the C., H. & D. should get rid of the Pere Marquette stock, but insisted that no method of so doing was promised or provided at the time. While, of course, the value of the Pere Marquette stock owned by the

C., H. & D. would be reflected in the price, later to be fixed, at which the Baltimore & Ohio would buy the C., H. & D. stock, it seems remarkable, particularly in view of the Pere Marquette's recent history, that the purchaser was not interested in knowing how much that value would affect the purchase price of the C., H. & D. stock, and the probabilities as to whether that value would increase or diminish after the purchase price was fixed and paid.

There are other features of this report by the committee to the board which are difficult to comprehend. For instance, an annual earning of $60,000 from equipment hire was counted on in the face of a known loss of $39,000 on that account during the preceding six months, and in the face of the warning in the Bulkley report of the inadequacy and worn-out condition of the C., H. & D. equipment. Then, too, a flat tax accrual of $300,000 per annum was counted on for each of the six years, despite the tendency of taxes to increase, and also despite the extensive improvements to the property which the plan proposed. And finally, operating expenses were estimated on a ratio of 75 per cent in 1910 and 1911, and 70 per cent in the remaining four years, while facing actual ratios of 76.43 in 1906, 75.80 in 1907, and 86.16 in 1908, as reported by comptroller Bulkley, not to mention "the constantly increasing operating ratio and taxes" which have for many years been frequently and vigorously urged upon our attention by this and other carriers seeking to justify increased rates.

The committee's estimates were disregarded when final plans were adopted, for thereunder the slender margin of surplus remaining from six years' operations, as estimated by the committee, was more than wiped out by an increase of $1,058,160 in fixed charges for those years, as shown by what follows.

It is evident from reports of progress made by the committee that the chief difficulty encountered in the final negotiations was with the committee representing the holders of the $15,000,000 of collateral trust notes which it was first proposed should be refunded by straight income bonds. The final report of the Baltimore & Ohio committee, outlining the agreements reached with the various parties at interest in the transaction, was rendered at a board meeting on May 25, 1909, which then authorized the proper officers to execute the agreements necessary to carry the acquisition of the C., H. & D. into effect as outlined in the report. Subsequently modifications of the agreements were made and approved at a meeting on July 8 and the entire transaction as finally put through was approved by the Baltimore & Ohio stockholders at a meeting on August 10, 1909, by a vote of 1,584,159 ayes against 50 nays.

The obligations originally to be performed by the Baltimore & Ohio were as follows, all being embodied in a "purchase contract" made under date of July 1, 1909, with J. P. Morgan & Company:

1. The Baltimore & Ohio agreed to purchase from the stockholder (J. P. Morgan & Company) in July, 1916, 74,097 shares of the common stock of the C., H. & D. at a fair and equitable price to be then determined by mutual agreement or by arbitration. The stock and the voting power thereon for seven years from July 1, 1909, was to be transferred to three voting trustees, J. Pierpont Morgan, E. H. Harriman, and Oscar G. Murray (as president of the Baltimore & Ohio), successors to the first and third to be appointed by the stockholder and the Baltimore & Ohio respectively, and successor to the second to be appointed by these two or, in case of disagreement, by a United States circuit judge of the sixth circuit. Seven members of the C., H. & D. board were to be named by the Baltimore & Ohio and six by the stockholder. The Baltimore & Ohio agreed not to permit a sale or other disposition or an incumbrance of the 110,000 shares of the Pere Marquette stock nor a sale, lease, or incumbrance of that company without the consent of the stockholder.

2. The Baltimore & Ohio agreed to execute a "supplemental trust agreement" dated July 1, 1909, with the C., H. & D. and the Central Trust Company of New York, and pursuant thereto to execute its guaranty of the principal and interest on not exceeding $11,557,000 of the purchase money collateral trust 4 per cent gold notes of the C., H. & D. due July 1, 1913.

3. The Baltimore & Ohio agreed to execute its guaranty of the principal and interest of $12,500,000 of the first and refunding mortgage bonds of the C., H. & D. dated July 1, 1909.

4. The stockholder agreed to pay sums equal to so much of the interest on the C., H. & D. general mortgage bonds above 3 per cent as the net earnings of that company in 1917, 1918, and 1919 should fail to provide, such sums to be payable out of and as a deduction from the purchase price of the stock.

5. The stockholder and the Baltimore & Ohio agreed to advance equally the amount necessary to meet any deficiency of the earnings of the C., H. & D. to meet the fixed interest of 1 per cent on the C., H. & D. general mortgage bonds during 1912, 1913, and 1914.

6. The Baltimore & Ohio agreed that during July, 1916 (or during the July next following its acquisition of the C., H. & D. stock, if such acquisition occurred prior to July, 1916), upon demand and presentation of the C., H. & D. general mortgage bonds, it would either (*a*) purchase same at $850 per bond, with interest adjustments, or (*b*) give in exchange for each bond so presented and surrendered the new 4 per cent bond of the C., H. & D. guaranteed by the Baltimore & Ohio as to principal and interest, the option of doing one or the other to lie with the Baltimore & Ohio. These undertakings of the Baltimore & Ohio were conditioned upon its right on any 1st day of July prior to and including July 1, 1916, to call said general mortgage bonds for purpose of exchange for new 4 per cent C., H. & D. bonds guaranteed by the Baltimore & Ohio.

In addition to the foregoing the final plans provided for the issuance by the C., H. & D. of $20,000,000 of new general mortgage bonds on which 4½ per cent interest was to be paid in 1910 to 1916, inclusive, if earned, but fixed interest was required to be paid at the rate of 1 per cent in 1912, 1913, and 1914, 3 per cent in 1915 and 1916, and 4½ per cent thereafter. Of these, $15,000,000 were to be used in

the redemption of a like amount of the matured collateral trust notes, $60 in cash per note of $1,000 being also given, and $5,000,000 were to be used as follows: $1,364,000 to satisfy the debt of the C., H. & D. to the Pere Marquette on account of the award of the arbitrators, $1,272,000 at 85 to redeem sundry outstanding unsecured notes, and the balance for other corporate purposes.

As already stated, the original forecast of the Baltimore & Ohio committee made no allowance for interest on these new general mortgage bonds. Considering only the amount of such bonds as were to be immediately issued, $17,636,000, there was thus added to the fixed interest charges over and above the committee's original estimate $1,058,160 for the six-year period from July 1, 1909 to 1915, thereby more than wiping out the slender surplus of $870,000 estimated by the committee to accumulate in that period.

Another very important feature of the plan as adopted was the guaranty by the Baltimore & Ohio of the principal and interest of $11,557,000 C., H. & D. purchase money collateral trust gold notes, which had been issued under the circumstances already detailed, which were to mature July 1, 1913, and which were to be secured by $13,000,000 of new first and refunding mortgage bonds dated July 1, 1909. This collateral was in substitution of the refunding mortgage bonds of July 1, 1904, so that by this plan the 110,000 shares of Pere Marquette stock became a free asset of the C., H. & D. The record is not clear as to how it was proposed to provide for the redemption of these notes. If it was intended that the collateral should be sold, the Baltimore & Ohio knew that according to its committee's estimate the C., H. & D. would have accumulated a deficit during the intervening four years of $740,420, on which account it would not seem feasible to anticipate a sale at a reasonable price, particularly as the contracts did not provide for any guaranty of the bonds by the Baltimore & Ohio. As a matter of fact, the other block of these same bonds, which, by the plan were to be sold immediately, were discounted 11½ per cent, although they bore the Baltimore & Ohio guaranty of principal and interest. It can hardly be likely that it was expected to find a market for unguaranteed bonds on a record of substantial deficits. Furthermore, if it was the intention to sell the collateral, it seems strange that the committee made no allowance for the increase in interest charges which would come from the inevitable necessity of selling at a discount. The only other alternative is that the Baltimore & Ohio intended from the beginning to assume the burden of redeeming these $11,557,000 of notes, as it in fact did, upon their maturity.

Under these conditions of purchase we find it difficult to understand why the Baltimore & Ohio, even allowing for an increase in

its revenues from prospective increase in interchange of tonnage with the C., H. & D., went ahead with its plans to invest in a property described by its own expert as "bankrupt," and which, far from receiving the "drastic" treatment which he considered necessary, was about to be "reorganized" on a basis which, according to the predictions of the company's own expert committee, would result in a deficit for at least six years. True, no immediate cash outlay would be required of the Baltimore & Ohio, and the price to be paid for the stock would depend on its arbitrable value several years hence. These facts probably had some influence, but certainly could not have disguised the evident deficit in operations; the seriousness of the direct guaranty of principal and interest on some $24,000,000 of bonds; the almost certainty of having to assume the burden of redeeming $11,557,000 of those bonds within four years; and the burden of either redeeming within six years the $17,636,000 of general mortgage bonds at 85, or of guaranteeing new bonds to replace them.

As in the case of the Erie, the menace of acquisition by a rival road was a factor, recorded at least for history's sake; its actual effect can not be determined. The Baltimore & Ohio committee made its favorable recommendation for purchase in view of the showing they had figured out, and also—

> in view of the anticipated injurious effect on the Baltimore & Ohio system if this property should be carried by others through this period and then acquired by other railroad interests running to the seaboard.

In this case the rival feared was the Chesapeake & Ohio, with which the committee representing the collateral trust note holders had negotiated, and concerning which Oscar G. Murray testified as follows:

> There was, however, I think, upon the part of the committee, a feeling that the property might be acquired by some other road, which would be detrimental to the interests of the Baltimore & Ohio.

What strong financial pressure was exerted on the prospective purchaser is not disclosed by the record, but the road's committee seemingly considered certain advantages to be gained along that line when they stated that—

> If purchase is made as now proposed, then for the term of the agreement the Baltimore & Ohio will have as active agents and partners the influential house of J. P. Morgan & Co., making every effort to effectuate a reorganization on the most conservative basis, and endeavoring to increase the revenues of the company to make their stock as valuable as possible.

The plan as finally agreed upon, and approved by the court, allowed the surrender of the property to the Baltimore & Ohio management on August 20, 1909. A majority in the board of directors was filled by nominees of the purchasing company, and changes in

officers immediately followed the change in control. The property and business was returned to the possession and custody of the company, subject to the right of the court, upon its own motion or upon the petition of any party to the cause, to resume possession and control. The receiver was never formally discharged.

Of the new general mortgage bonds, authorized issue $20,000,000, $15,000,000 in par, together with $60 in cash per note of $1,000, were delivered in exchange for $15,000,000 of the 4½ per cent collateral trust notes and all unpaid coupons thereon; $1,364,000 in par were delivered to the Pere Marquette in satisfaction of the Harmon-Crapo arbitration award; and $1,272,000 in par were delivered at 85, together with $4,237.24 in cash, to redeem sundry call loans amounting to $892,624.79 and accrued interest thereon of $192,812.45. The collateral trust notes thus redeemed were represented in the company's assets, as previously explained, partly by stock of the Pere Marquette and partly by 5 per cent preferred stock of the C., H. & D. purchased for retirement. The arbitrators' award did not specify the particular claims which were allowed in determining the amount awarded, but from the nature of the claims rehearsed in that award it seems plain that no permanent property was secured to the C., H. & D. by satisfaction of the award through issuance of $1,364,000 of its general mortgage bonds to the Pere Marquette. As to the notes redeemed it seems quite likely, in view of the large deficits accumulated at the time, that these $892,624.79 of notes were not represented at all in the property investment of the C., H. & D., but the accounts do not permit the determination of the actual facts in such cases.

Turning now to the first and refunding mortgage bonds, the record shows that $13,000,000 in par thereof, not guaranteed, were at once deposited as collateral to the $11,557,000 of C., H. & D. purchase money collateral trust gold notes dated January 1, 1908: $1,677,000 in par, also not guaranteed, together with $4,880.40 of accrued interest thereon and $2,589.60 in cash were used at 89 to redeem sundry notes amounting to $1,500,000; and $7,500,000 in par, guaranteed by the Baltimore & Ohio, were sold for cash at 88½ and interest. The proceeds of this $7,500,000 went into the general funds, from which there was paid a note of $5,000,000, plus $64,583.33, interest thereon, to Morgan & Company for their loan made to carry out the reorganization plans. Here, also, it is not possible to state how much, if any, of the proceeds of the $1,500,000 of sundry notes redeemed was represented in the property investment of the C., H. & D., and the same is true of a part of the proceeds from the $7,500,000 of new bonds last mentioned. The "reorganization loan," however, was handled in a special account. In addition to the $5,000,000 received from J. P. Morgan & Company that account was

credited with $244,101.05 of net proceeds from the sale of $250,000 in par of treasury purchase money collateral trust gold notes and $1,682.62 of bank interest, making aggregate credits of $5,245,783.67, which was disbursed at various times for the following purposes:

Redemption of receiver's certificates	$851,830.00
Redemption of receiver's call loans	500,000.00
Partial payments of principal of various notes	9,422.93
Matured interest on C., H. & D. funded debt	1,377,834.27
Interest on receiver's and other loans	20,885.89
Interest on matured coupons to date of settlement	44,190.88
Commissions for paying coupons	2,540.02
Interest payable by C., H. & D. on terminal company bonds	54,000.00
Services of trustees and other expenses in connection with the issuance of securities and settlement of notes, etc	30,372.87
Payment of material claims, etc	927,845.57
Payments in connection with recovery of Ashland & Ironton bridge and related properties	329,824.70
Cash payment of $60 with each general mortgage bond exchanged for 4½ per cent collateral trust gold note, matured Sept. 1, 1908	900,000.00
Part of compensation and expenses of committee representing holders of collateral trust gold notes	100,000.00
Services and expenses of committee representing holders of Cincinnati, Findlay & Fort Wayne bonds	14,000.00
Payment to Frank O. Loveland for services as special master	5,500.00
Payment to Geo. F. Brownell for legal services, in full, Sept., 1905, to Oct., 1909	10,000.00
Payment to F. W. Stevens for legal services, in full, to Apr. 1, 1909	15,000.00
Rental of Huffman Basin, Dayton, Ohio, for period prior to receivership	15,904.93
Taxes	36,021.17
Miscellaneous items	610.44
Total	5,245,783.67

Payments such as the above are common to most reorganizations. Particularly is this so in cases like the present, where the stock owning and junior security interests, in order to sacrifice as little as possible themselves, are compelled to call upon the prior creditors for still less sacrifice. In this as in many railroad reorganizations, reliance was seemingly placed upon future prosperity to support not only the securities defaulted on in the past, but additional securities issued to care for the defaulted interest, for heavy reorganization expenses, and for other concessions made to avoid foreclosure. In the Pere Marquette reorganization plan proposed on October 30, 1916, the estimated cash requirements aggregating $16,000,000 included over $2,500,000 on account of reorganization expenses, committees' expenses, and commissions.

The funding of interest is not completely revealed in the foregoing statements. The record otherwise shows that all of the $851,830 of receiver's certificates redeemed had been issued to pay bond interest. In addition, it is altogether likely, in view of the annual operating

deficits during the receiver's operation, that the $500,000 of his call loans had been made to keep up payments of interest on underlying bonds, although the record does not conclusively show this to be a fact. Mention has already been made of the use of some of the new general mortgage bonds to redeem notes and $192,812.45 of accumulated interest thereon; so that, leaving out of consideration the principal of notes which may or may not have been issued to pay interest, there is definitely shown to have been about two and a half million dollars of interest funded in these two new issues of C., H. & D. bonds. This sum we do not doubt would be largely increased if the facts could be determined as to the use made of proceeds of the notes also redeemed by these bonds.

The burdens put on the C., H. & D. in the shape of payments of reorganization expenses were exceedingly heavy. Such charges aggregated about $650,000. Some were paid wholly or in part from the proceeds of first and refunding bonds, and are thus shown in the preceding list; the balance was paid largely from a loan of $500,000 made on August 14, 1909, by Morgan & Company which as late as June 30, 1916, was still unpaid. Besides legal fees and expenses, there were two principal classes of expenses represented in the $650,000; one, the trustees' fees and expenses in connection with the bonds and notes, aggregating some $85,000, and the other the payments made on account of bondholders' committees and like expenditures, about $325,000. There was one item included in the latter class which deserves particular attention, namely, $229,002.89 paid to the committee representing the holders of the $15,000,000 of 3½-year collateral trust notes. The books of the C., H. & D. do not show any details of this large expenditure, but according to the record before us it was disbursed as follows:

To J. N. Wallace	$24,500.00	fee as member of the committee.
To H. S. Redmond	24,500.00	fee as member of the committee.
To Harry Bronner	24,500.00	fee as member of the committee.
To F. S. Smithers	24,500.00	fee as member of the committee.
To J. H. McClement	24,500.00	fee as member of the committee.
To J. H. McClement	10,000.00	fee for additional services.
To Central Trust Co. of New York	25,000.00	fee for services to committee.
To Joline, Larkin & Rathbone	49,500.00	fee for legal services and charges of counsel retained by them.
To F. S. Randall	2,000.00	fee for secretarial services.
To F. L. Babcock	2,000.00	fee for secretarial services.
To Wm. D. Guthrie	2,000.00	fee for services.
To Hallgarten & Co	2,500.00	fee for services rendered and disbursements incurred by Swiss Bank Verein.
To sundry parties	3,481.25	for advertising.
To Central Trust Co	1,079.00	for interest on loans.
To sundry parties	8,942.64	for miscellaneous expenses.
Total	229,002.89	

These services were rendered, not to the carrier, but to creditors of the carrier. They were paid for by the carrier out of borrowed money, and its heavy interest-bearing debt was thereby increased. No consideration appears to have been shown for its burdened financial condition in fixing these munificent fees. There is also a touch of the ironical in the fact that the note holders served by this costly array of committeemen, counsel, and trustees, at the expense of their debtor, were constrained as the outcome of that service to relinquish interest for 3 years and 10 months up to July 1, 1909, on their 4½ per cent notes, and to accept for each of their notes, principal $1,000, the sum of $60 in cash, and a general mortgage bond, principal $1,000, which called for a further sacrifice of 4½ per cent interest for two years, of 3½ per cent for the following three years, and of 1½ per cent for the next following two years, in case the road failed to earn those sums.

Before leaving this subject there is one further agreement to mention, one by which the C., H. & D. minority stockholders were cared for. This was dated July 1, 1909, and was entered into by the Baltimore & Ohio with such of the holders of the C., H. & D. common stock as should deposit such stock thereunder before September 10, 1909, later extended to February 1, 1910. The Baltimore & Ohio agreed to pay the same price for such stock as would be fixed for the stock to be purchased from J. P. Morgan & Company. Under this agreement some 5,200 shares of stock have been deposited, thus involving the Baltimore & Ohio in a purchase of practically all of the 80,000 shares of common.

IX. PERIOD OF CONTROL BY BALTIMORE & OHIO, FROM 1909.

We now come to a consideration of the results to the C., H. & D. from its management by the Baltimore & Ohio which began with the fiscal year of 1910, or on August 18, 1909, to be precise. There is here inserted a comparative annual income statement to June 30, 1914:

Item.	Year ended June 30, 1910.	Year ended June 30, 1911.	Year ended June 30, 1912.	Year ended June 30, 1913.	Year ended June 30, 1914.	Total, 1910–1914.
Railway operating income:						
Rail operations—revenues	$9,446,524.21	$9,570,281.69	$9,825,320.62	$10,071,296.54	$10,084,217.04	$48,997,640.10
Rail operations—expenses	7,587,296.51	7,398,588.60	7,317,252.51	8,061,989.96	9,737,841.33	40,102,968.91
Net revenue rail operations	1,859,227.70	2,171,693.09	2,508,068.11	2,009,306.58	346,375.71	8,894,671.19
Net deficit auxiliary operations						
Net railway operating revenues	1,859,227.70	2,171,693.09	2,508,068.11	2,009,306.58	346,375.71	8,894,671.19
Railway tax accruals	308,761.51	378,976.73	397,674.67	430,419.19	464,608.61	1,980,440.71
Railway operating income	1,550,466.19	1,792,716.36	2,110,393.44	1,578,887.39	*Dr. 118,232.90*	6,914,230.48
Other income:						
Hire of equipment credit balance						
Joint facility rent income	25,599.18	38,391.42	69,627.33	74,515.55	85,992.10	294,125.58
Miscellaneous rent income	1,535.09	952.52	1,764.39	7,520.56	11,119.61	22,892.17
Dividend income	52,529.50	54,326.04	102,527.00	91,899.00	90,012.50	391,294.04
Income from funded securities	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	7,500.00
Income from unfunded securities and accounts	35,731.07	36,615.75	30,089.72	31,899.83	23,868.21	158,204.58
Miscellaneous income			139.51	102.00		241.51
Total other income	116,894.84	131,785.73	205,647.95	207,436.94	212,492.42	874,257.88
Gross income	1,667,361.03	1,924,502.09	2,316,041.39	1,786,324.33	94,259.52	7,788,488.36
Deductions from gross income:						
Deductions for lease of other roads	326,127.92	319,307.93	310,728.25	310,728.25	310,728.25	1,577,620.60
Hire of equipment—debit balance	106,427.60	104,781.08	188,863.36	614,532.34	984,665.85	1,959,270.23
Joint facility rent deductions	152,890.14	128,972.58	162,574.09	185,577.10	165,742.58	795,756.49
Miscellaneous rent deductions	409,496.91	407,720.97	404,054.70	404,390.56	403,126.29	2,028,789.43
Interest deductions for funded debt	1,278,939.08	1,590,015.21	1,841,681.41	1,883,867.57	1,551,913.22	8,146,416.49
Interest deductions for unfunded debt	113,742.59	34,750.23	26,026.34	30,294.89	492,574.89	697,388.94
Total deductions	2,387,624.24	2,585,548.00	2,933,928.15	3,429,390.71	3,908,751.08	15,245,242.18
Net loss	*720,263.21*	*661,045.91*	*617,886.76*	*1,643,066.38*	*3,814,491.56*	*7,456,753.82*
Mileage operated (single track) on June 30	1,036.05	1,014.60	1,014.60	1,014.60	1,015.27	

Lest there be misunderstanding on that point it should be said that the results in 1913 and 1914 are due in part to extraordinary circumstances incident to floods in the spring of 1913. This will be considered at length later on.

It will be noted that the Baltimore & Ohio committee's estimate of $558,000 deficit for 1910 was exceeded by the actual results—$720,263.21 being the amount of the year's fixed charges which the earnings failed to provide. One of the features of the readjustment plans was that $5,000,000 in par of the new first and refunding mortgage bonds bearing the Baltimore & Ohio guaranty were to be sold at once to be used for improvements and betterments. The bankers failed to exercise their option on these bonds, however, and before the first year was out the Baltimore & Ohio found it necessary to advance $550,000 in order to enable the C., H. & D. to carry on construction work already begun. First and refunding bonds were accepted as collateral at a price of 80, the Baltimore & Ohio board approving the transaction on July 14, 1910, and voting authority for loans up to $2,550,000. Another important transaction at the close of this first year was the purchase of some $2,897,630 worth of new equipment. Of this amount $577,630 was paid in cash and the balance covered by 5 per cent equipment notes. This, of course, increased the fixed charges of the company and with the interest on Baltimore & Ohio loans produced a total interest burden for the second year of the Baltimore & Ohio control which was only $309,000 under the annual interest charges on the property before the readjustment was undertaken.

1. *Sale by C., H. & D. of Pere Marquette stock.*—Early in 1911 it became apparent that the Pere Marquette was again in serious financial distress. It had been operated at a deficit of over $600,000 during the first seven months of the fiscal year to June 30, 1911, and its cash requirements for the remainder of the calendar year 1911 were estimated at about $3,300,000, not taking into account the necessary renewal at various times before December 31, 1911, of notes aggregating $2,350,000. The company's credit was exhausted, so the matter was brought to the attention of the C., H. & D. and Baltimore & Ohio managements on account of the large holding of Pere Marquette stock by the C., H. & D.

Investigation by the Baltimore & Ohio led it to the conclusion that its interests in the Pere Marquette "were too remote to justify that company (the Baltimore & Ohio) in making such advances" either directly or indirectly through the C., H. & D. To appreciate the change of front involved in that statement we need only turn back some two years to negotiations for the sale of the C., H. & D.

to the Baltimore & Ohio where control of the Pere Marquette is given prominence by both seller and buyer as a "reason." Of course, the failure of the C., H. & D. to earn its own fixed charges rendered it incapable of itself lending any assistance. It was, therefore, decided to endeavor to sell the Pere Marquette stock, and negotiations along that line resulted in a sale at $23 per share to J. P. Morgan & Company, the latter agreeing also to render financial assistance to the Pere Marquette. The sale was under an agreement dated February 27, 1911, which was approved by the C., H. & D. board at a meeting on that day and by the stockholders on October 10, 1911, not specifically, however, but through a blanket vote approving all acts of the directors and executive committee during the year. Under the terms of the agreement the C., H. & D. was to bear all expense incident to securing the release of the stock, was to pay the New York transfer tax, and was to save the purchaser harmless from all claims against the stock. The purchase price was to be payable on December 1, 1916, without interest, and less all indebtedness then due or owing the purchaser by the C., H. & D.

As has hereinbefore been stated, this Pere Marquette stock had been included in and never released from the sale contract of April 6, 1905, made by the C., H. & D. with the Michigan Securities Company. The necessity of obtaining such a release in order to consummate this sale to Morgan & Company was seemingly overlooked at the time, for it was not until June 8, 1911, that a release was undertaken and effected.

It will be recalled that the C., H. & D. bought this stock at the price of $125 per share and issued $13,750,000 of securities in payment therefor, so that its sale at 23 resulted in a loss of $11,220,000. This constitutes the largest single item in its book deficit of $29,878,658.83 accumulated to June 30, 1914. In addition it paid $312,500 cash commissions to F. H. Prince & Company for alleged services in connection with the purchase, and, of course, was put to other expense in issuing its securities and in collateral transactions. It has thus suffered a direct loss of well on toward $12,000,000. Furthermore, the C., H. & D. no longer has any rights even in the purchase price of $23 per share, payable December 1, 1916, by J. P. Morgan & Company to the C., H. & D., for under the terms of an agreement dated June 13, 1912, said rights, together with various securities, were transferred to the Baltimore & Ohio as part of the collateral security for sundry cash loans.

2. *Modification of C., H. & D. stock purchase contract.*—Conditioned upon this sale of Pere Marquette stock to J. P. Morgan &

Company, there was executed an agreement, dated February 27, 1911, supplemental to the original purchase agreement between that firm and the Baltimore & Ohio covering the sale of the C., H. & D. stock. By this first supplemental agreement a minimum price of $34.144 plus per share and a maximum price of $100 per share was fixed for the 74,097 shares to be bought from the Morgan firm, between which limits the price was to be fixed according to their original agreement. This minimum price was one deduced by dividing the amount to be paid by Morgan & Company for the Pere Marquette stock, $2,530,000, by the number of shares of C., H. & D. stock sold by that firm to the Baltimore & Ohio.

3. *Operating losses in 1911 and 1912.*—Reference to the statement at page 199 herein shows that for the fiscal year to June 30, 1911, the C., H. & D. failed by $661,045.91 to earn its fixed charges, and that the corresponding deficit the following year was $617,886.76. The Baltimore & Ohio committee had estimated that the results would be a deficit of $413,000 in 1911 and a profit of $245,600 in 1912. Contributing to this failure of expectations, there may be noted the following: Gross revenues for 1911 and 1912 were $9,570,000 and $9,825,000, respectively, against the $9,540,000 and $10,112,000 estimated by the committee; the operating ratios were 77.31 and 74.47 per cent, against estimated ratios of 75 and 70 per cent, respectively; taxes were $378,977 and $397,675, instead of $300,000 for each year as estimated; and, even with the new equipment purchased in 1910 there were debit balances for hire of equipment reaching $104,781 and $188,863, respectively, instead of credit balances as estimated. It is also worthy of note that in 1912 the total interest charges were only $66,000 less than for the year immediately preceding the assumption of control by the Baltimore & Ohio.

4. *Further modification of C., H. & D. stock purchase contracts.*—The original contract covering the purchase of the C., H. & D. stock was again modified by a supplemental agreement dated October 21, 1912, approved by the Baltimore & Ohio board of directors on October 31, 1912, apparently without previous consideration or authorization of negotiations. The sum payable by the Baltimore & Ohio for the C., H. & D. stock was conditioned on the payment by Morgan & Company of the before-mentioned contracted price, $2,530,000, for the 110,000 shares of Pere Marquette stock and was fixed, both as to maximum and minimum, at that same amount, payable unconditionally on December 1, 1916, plus an additional sum of $740,970 payable on the same date, but dependent on whether or not the C., H. & D. should be compelled to make good its guaranty of $9,207,000 of Pere Marquette bonds, or should be forced into a

receivership on that account. In this supplemental agreement the parties each discharged the other from any liability to advance equally any sums necessary to make up a shortage of C., H. & D. earnings to meet the 1 per cent interest charges on its general mortgage bonds in 1912, 1913, and 1914; it also relieved J. P. Morgan & Company from its obligation to pay a sum equal to so much of the interest above 3 per cent per annum for the fiscal years ended June 30, 1917, 1918, and 1919, on the C., H. & D. general mortgage bonds, as the net earnings of that company for those years should not suffice to pay.

Oscar G. Murray, president of the Baltimore & Ohio in 1909, testified that at the time the C., H. & D. purchase was made he was not informed as to that company's guaranty of the $9,207,000 of Pere Marquette bonds referred to in this agreement. The subject was not covered in Major Bulkley's report, but the record before us shows that Major Bulkley had been fully informed of the guaranty by comptroller Cramer, of the C., H. & D. It also appears that facts respecting the guaranty had previously been given in financial publications.

5. *Flood damages in 1913.*—In considering the results for 1913 and 1914 as given in the statement at page 199, allowance must be made for the extraordinary expense and temporary loss of business resulting from the floods in Ohio and Indiana in the spring of 1913. These caused the loss to the C., H. & D. of nine bridges, three of which were over large rivers, of 61 miles of track, of station buildings, and of other property, and the practical suspension of traffic for several months. A receivership for the property was not sought. The Baltimore & Ohio at once joined operating forces with the C., H. & D. in the reconstruction of the line and the restoration of the facilities. All of the replacements with permanent structures had not even yet been put in when testimony on this subject was taken in May, 1916, but up to June 30, 1914, a direct outlay of $1,277,933.18 had been made on account of flood damages. Of this $176,941.62 represented additions to and betterments of the property chargeable to property; the balance has been charged to operating expenses, $25,000 in 1913 and $1,075,991.56 in 1914. To that extent certainly the deficits of those years must be considered due to abnormal conditions; what additional abnormality resulted from loss in gross revenues is, of course, a matter of conjecture only.

6. *Cash advances by Baltimore & Ohio.*—Funds to pay these flood damages were all advanced by the Baltimore & Ohio. The flood advances, together with others made by the Baltimore & Ohio from

time to time for various purposes ever since 1910, aggregated $10,488,737.52 up to June 30, 1914, as shown in the following table:

Year ended June 30—	For construction.	For deficit in income, etc.	For maturing equipment obligations.	For flood expenditures.	Total.
1910	$550,000.00				$550,000.00
1911	2,449,000.00	$203,223.34	$496,776.66		3,149,000.00
1912	425,000.00	631,488.34	480,776.66		1,537,265.00
1913	265,000.00	1,129,223.34	470,776.66	$400,000.00	2,265,000.00
1914	300,000.00	1,420,575.91	466,896.61	800,000.00	2,987,472.52
Total	3,989,000.00	3,384,510.93	1,915,226.59	1,200,000.00	10,488,737.52

At a meeting on May 29, 1913, the finance committee of the Baltimore & Ohio referred to the president the matter of ascertaining what arrangements could be made to secure an extension of the $11,557,000 of C., H. & D. notes falling due on July 1 following, and which, as previously explained, had been indorsed by the Baltimore & Ohio with its guaranty of principal and interest. He reported at a meeting on June 10 that it was impossible to arrange for such an extension and recommended that the company issue its one-year 5 per cent secured notes to provide for the retirement of the C., H. & D. notes and for other financial requirements of the Baltimore & Ohio. The committee approved this recommendation, and it was formally approved by the executive committee and by the board on June 19, 1913. These meetings also voted authority for the payment by the Baltimore & Ohio of the principal and interest on said C., H. & D. notes, the latter having given notice of its inability so to do. All this entailed an additional cash outlay by the Baltimore & Ohio of $11,788,140.

On December 11, 1913, the Baltimore & Ohio board appointed Edward R. Bacon, L. F. Loree, Robert S. Lovett, and president Willard, ex officio, as a committee to consider and report on the C., H. & D. relations to the Baltimore & Ohio. At a meeting of the board on June 11, 1914, Bacon made an oral report in which he referred to the statement filed by president Willard in *The Five Per Cent Case*, *supra*, and called particular attention to the changes which had come about since execution of the purchase agreement of July, 1909, such as large increases in rates of pay, taxes, and other expenses which had operated not only to make impossible of realization the estimate of net earnings made in 1909 but, through their effect on the Pere Marquette—

had greatly reduced the value of the stock of that company which had been looked upon as a substantial asset in the treasury of the Cincinnati, Hamilton & Dayton.

There followed a recital of the results of operation to date, the heavy expenditures on account of the flood of 1913, and a statement of the advances made by the Baltimore & Ohio, aggregating over $21,000,000. Mention was made of the deficiency of equipment on the C., H. & D., to remedy which, and the then serious charges for hire of foreign equipment, would require very considerable sums. These matters and the poor earnings on many of the branches and the low rates in that territory brought the committee to the conclusion that the Baltimore & Ohio could no longer advance funds to take care of the C., H. & D.'s many necessities. The special committee was then discharged and its duties given to the executive committee. The board then authorized the president, with the approval of the executive committee, to make such loans to the C., H. & D. to meet its obligations maturing July 1, 1914, as said committee might deem it advisable to make.

At this point it will be helpful to consider in a general way the results of the financing and operations of the C., H. & D. from its organization in 1895 up to June 30, 1914. In Appendix 5 there is presented a statement for that period which contains the principal items of the general balance sheet and also a consolidated statement of income and profit and loss accounts. The following recapitulation of an analysis of the company's profit and loss account shows the principal items going to make up the $36,068,145.29 of net losses, almost all of which accumulated in the period since July 1, 1904. This should be read in connection with the detailed recital in the report of the events here summarized.

Recapitulation of an analysis of profit and loss account covering the period, July 1, 1895, to June 30, 1914, inclusive.

Item.	Debit.	Credit.
Income account balances transferred—1896 to 1914	$13,405,262.05	$2,360,003.59
Loss through sale of $11,000,000 Pere Marquette R. R. common stock, bought at 125, sold at 23	11,220,000.00	
Expenses acquiring Pere Marquette R. R. common stock[1]	901,707.36	
Stock transfer tax on Pere Marquette R. R. common stock	2,200.00	
Expense of suit of Chas. A. Bruce and Corporate Organization and Audit Co. *v.* C., H. & D. for Prince's additional commissions	11,455.66	
Expenses retiring Cincinnati, Hamilton & Dayton Ry. Co. 5 per cent preferred stock (par value $6,676,925)[1]	1,265,876.29	
Premium of $22 per share paid in retiring $6,676,925 Cincinnati, Hamilton & Dayton Ry. Co. 5 per cent preferred stock	1,468,918.62	
Expenses retiring Cincinnati, Hamilton & Dayton Ry. Co. 4 per cent preferred stock (par value $1,074,500)[1]	33,414.13	
Award to Pere Marquette R. R. Co. Apr. 30, 1908, by Harmon-Crapo arbitration of claims of C., H. & D. Ry. and P. M. R. R. against each other, in matters growing out of lease (Mar. 1, 1905) of latter by former	1,364,000.00	
Cancellation of sundry advances to and bills against the Chicago, Cincinnati & Louisville R. R. Co. in consequence of "agreement and release" of Feb. 1, 1907 (Bradford settlement)	467,831.29	
Sundry expenditures in connection with the readjustment of the finances of Cincinnati, Hamilton & Dayton Ry. Co. in 1909	650,032.18	
Direct charges to profit and loss account, of discount, commissions, expenses, etc., in connection with issuance and extension of securities	1,735,422.50	

[1] The carrier's accounting records group and designate these items as here shown, but analyses of those accounts show that they contain sums not properly so classifiable, among which are items purposely omitted from the 1905 income account, as explained in the section beginning at page 155.

Recapitulation of an analysis of profit and loss account covering the period, July 1, 1895, to June 30, 1914, inclusive—Continued.

Item	Debit.	Credit.
Depreciation prior to July 1, 1907, on equipment retired	$2,475,232.37	
Depreciation on buildings, tracks and structures, retired, not replaced	90,101.81	
Dividend No. 1 on Cincinnati, Hamilton & Dayton Ry. Co. common stock (2 per cent on 80,000 shares)	160,000.00	
Advances made to Cincinnati, Richmond & Fort Wayne R. R. Co. from 1872 to 1888, charged off	383,515.64	
Reduction of book value of Cincinnati Elevator Co. stock	74,999.00	
Part of the adjustments of accounts resulting from the consolidation of 1896	6,131,986.46	$902,400.00
Interest waived on Cincinnati, Hamilton & Dayton Ry. Co. collateral trust notes of Mar. 1, 1905, in connection with the readjustment of 1900		1,687,500.00
Increase in book value of Southwestern Construction Co. stock owned		382,908.53
Increase in book value of Piqua & Troy Branch R. R. bonds		24,999.00
Dividends and interest on Michigan Securities Co. stock		56,301.15
Interest and exchange, July 1, 1895, to June 30, 1904	25,634.56	230,946.59
Overcharge claims paid, $106,086.06, and expense auditing same, $6,300	112,386.06	
Dividends on Cincinnati, Indianapolis & Western Ry. Co common stock owned		294,120.97
To adjust accounts, "Undivided Expenses," and "River & Railroad Transportation Co."	36,742.75	
Miscellaneous items	129,671.26	139,064.87
	42,146,389.99	6,078,244.70
	6,078,244.70	
Net debit difference between balance (Cr. $6,189,486.46) on July 1, 1895, and balance (Dr. $29,878,658.83) on June 30, 1914	36,068,145.29	

X. C., H. & D. SECOND RECEIVERSHIP, 1914.

Obviously a second receivership of the C., H. & D. had been inevitable for some time. On July 2, 1914, a bill praying for such receivership was filed in the district court of the United States for the southern district of Ohio, western division, based on default of interest due July 1 on first and refunding mortgage bonds and on certain bonds of subsidiary companies. On that day the court appointed Judson Harmon and Rufus B. Smith as receivers, and they immediately assumed control. For the year following, an income account on substantially the same mileage as that given for 1914 in the statement at page 199 shows a deficit of $3,093,185.58, including a full accrual of interest on bonds, whether defaulted or not.

Foreclosure proceedings, begun by the trustees of the mortgages securing the bonds of the Cincinnati, Indianapolis & Western Railway Company, resulted in a sale of its properties in September, 1915, being the lines from Hamilton, Ohio, to Springfield, Ill., and from Sidell to West Liberty, Ill., aggregating some 360 miles owned. Two new companies were incorporated to take over the foreclosed lines, one, the Cincinnati, Indianapolis & Western Railroad Company, acquiring the line from Hamilton to Springfield, and the other, the Sidell & Olney Railroad Company, acquiring the line from Sidell to West Liberty, and continuing the trackage right operation from West Liberty to Olney. The result is that the C., H. & D.'s stock-owning interest in that former subsidiary has been entirely wiped out, and its book asset of $2,303,252.52 representing the same must now be written off.

XI. REORGANIZATION PLANS FOR C., H. & D., 1916.

On July 8, 1915, following a statement by president Willard as to C., H. & D. affairs, the board of the Baltimore & Ohio passed resolutions, the preamble to which stated that through the enforcement of divisional liens the C., H. & D. system was in process of disintegration, the security of all interested was thereby being impaired, and that counsel advised, on account of conditions then existing and likely to exist on July 1, 1916, that there was serious question as to the legal validity and effect of the agreements entered into by the Baltimore & Ohio in 1909 with respect to the C., H. & D. general mortgage bonds, litigation concerning which could be avoided only by the cooperation of those interested. The resolution provided that the company should cooperate in carrying through a plan for the reorganization of C., H. & D. affairs, and authorized the president to take such action as he might find most advisable in that connection.

The next step came on September 16, 1915. President Willard then outlined to the board a proposed plan of reorganization of the C., H. & D. and the same was approved, authority to take the necessary steps to carry out a plan being then voted the president and a special committee constituted of Edward R. Bacon, L. F. Loree, Charles A. Peabody, and the president ex officio. There resulted a draft of a plan of reorganization dated November 15, 1915, which was submitted to and approved by the board on November 24, together with a draft of a letter to Kuhn, Loeb & Company whereby they were to become reorganization managers. One feature of these arrangements was that, irrespective of the consummation of the plan, the Baltimore & Ohio became bound to purchase C., H. & D. general mortgage bonds at $700 per bond, with interest at 4 per cent from January 1, 1916, provided only that the number of said bonds as fixed by the reorganization managers should first be deposited for such purchase.

The president reported to a board meeting on March 29, 1916, that of the $17,529,000 of said bonds outstanding over 87 per cent had been purchased; also, that an agreement had been concluded with a committee representing over 70 per cent of the $3,500,000 Cincinnati, Dayton & Ironton 5 per cent bonds under which that committee was to recommend the acceptance for those bonds of 60 per cent of their face value in proposed Baltimore & Ohio divisional 4 per cent bonds. These accomplishments had enabled the promulgation of a reorganization plan which would cover the main line of the C., H. & D. from Cincinnati to Toledo, the main-line branches, and the line from Dayton to Wellston, a total of some 368 miles, comprising the more important portions of the system and those which could best be operated to mutual advantage in conjunction with the Balti-

more & Ohio. It had been found advisable to amend and modify the original plan of November 15, 1915, and a new and final plan and agreement of reorganization dated February 15, 1916, was presented to the board at this meeting and by it ratified and approved.

By notice dated April 7, 1916, this final plan was declared operative by Kuhn, Loeb & Company as reorganization managers. Certain of its features, dependent upon later decisions, are not stated explicitly in the original document, but a general statement of its terms follows.

The plan contemplates the organization of a new company to take over the leasehold of the Dayton & Michigan, from Dayton to Toledo, 141 miles, and the following sections of road owned by the present company, all in Ohio, namely, the main line from Cincinnati to Dayton; the main-line branches from Tontogany to North Baltimore, from Deshler to Findlay, and from Hamilton to Middletown; the line from Piqua to Troy; and that part of the Dayton-Wellston branch between Dayton and Ironton Junction, with such additional portion as the managers may determine. Including the leasehold this will make a total mileage of about 368 miles, which is to be operated as an integral portion of the Baltimore & Ohio system.

All of the securities of the new company are to be turned over to the Baltimore & Ohio, such securities consisting of stock, refunding mortgage bonds, and adjustment and improvement mortgage bonds, the latter being secured on the same property as the refunding bonds but subordinate thereto. The new company will assume the $2,000,000 second mortgage 4½ per cent bonds, now first mortgage, and $3,000,000 of the 5 per cent general mortgage bonds of the old C., H. & D. R. R. The securities of the Dayton & Michigan, consisting of $2,728,000 of 4½ per cent consolidated mortgage bonds and $1,211,250 of preferred and $2,396,950 of common stocks on which 8 per cent and 3½ per cent dividends, respectively, are guaranteed under the lease, will not be disturbed. The amounts of stock and adjustment and improvement bonds are not fixed in the plan, and the same is true as to the refunding bonds, save that the latter are required always to equal in amount the new Baltimore & Ohio bonds under which they are to be pledged.

The Baltimore & Ohio is to issue as its own direct obligation a new series, described in the plan as Toledo-Cincinnati division bonds, which are to mature in 1959, to bear interest at 4 per cent, and to be redeemable in whole or in part at 102½ and accrued interest on any semiannual interest date. The total authorized issue is not to exceed $35,000,000 and it is intended that ultimately they shall be secured by a direct lien on the owned mileage and equipment and upon the leasehold of the new company and in the meantime will be

secured by the pledge of all the new company's refunding bonds, the security for which is yet to be determined. Of these $85,000,000 of Toledo-Cincinnati division bonds $18,749,550 in par are to be reserved to retire the bonds remaining undisturbed under the plan and to provide for equipment, additions and betterments, and additional property, etc. The remaining $16,250,450 are all to be presently issued. Of these $5,000,000 are to be purchased by Kuhn, Loeb & Company and the proceeds used to provide for maturing equipment obligations, for the purchase of new equipment, for additions and betterments, and for other corporate requirements of the new company save in so far as such proceeds are applied in the payment of receivers' obligations, court charges, legal expenses, and reorganization expenses. The balance, $11,250,450, is to be used in refunding outstanding securities as follows:

$7,500,000 to retire at par $7,500,000 C., H. & D. first and refunding 4 per cent bonds guaranteed by Baltimore & Ohio.

$1,425,450 to retire at 85 $1,677,000 of same bonds not guaranteed by Baltimore & Ohio.

$2,100,000 to retire at 60 $3,500,000 Cincinnati, Dayton & Ironton 5 per cent first mortgage bonds.

$225,000 to retire at par $225,000 Piqua & Troy Branch 4 per cent first mortgage bonds.

The plan provides also for a cash payment of $10 on each guaranteed C., H. & D. first and refunding 4 per cent bond retired, to cover expenses of holders.

In addition to putting out its Toledo-Cincinnati division bonds as just described, the Baltimore & Ohio is obligated under the plan to provide the funds to redeem at 70 plus interest from January 1 to 12, 1916, at 4 per cent, the $17,529,000 of general mortgage bonds of the C., H. & D. which have been described in connection with the readjustment of that road in 1909. This would call for a cash outlay of about $12,285,375, which, with $22,695,143 of cash advanced to or for the C., H. & D. to July 1, 1915, would make a cash outlay of nearly $35,000,000. This does not include interest on such advances, and that item would amount to about $2,706,000 to January 1, 1916, and $3,274,000 to July 1, 1916, computed on a 5 per cent basis. Whether or not this interest will be entirely lost does not appear; certainly no provision for its satisfaction in any form is specifically made in the plan.

In addition to issuing its new bonds and providing the twelve and a quarter millions of dollars in cash the plan requires that the Baltimore & Ohio shall surrender the purchase money notes and other obligations of the old company representing the $22,695,143 of cash previously advanced, and shall also surrender all of the collateral

securing those advances except certain thereof, which are to be retained, estimated in value at $3,368,000 as indicated in the following:

			Estimated value.
Obligation of J. P. Morgan & Co. account of Pere Marquette stock		$2,530,000	
Less—			
Demand note in their favor	$500,000		
Advance account general mortgage interest	87,735		
Interest estimated to July 1, 1916	74,465		
		662,200	
			$1,867,800
7,501 shares Southwestern Construction Company stock		750,100	
Estimated at			1,500,200
5 shares of same, some question as to ownership		500	
			3,368,000

XII. BALTIMORE & OHIO POSITION SUMMARIZED.

One of the considerations moving the Baltimore & Ohio management in 1909 to the purchase of the C., H. & D. was a desire to add to the Baltimore & Ohio system a north and south line as a connecting feeder between its northern and southern east-and-west lines to Chicago and St. Louis, respectively. Those lines then had no such connection west of the Newark-Chicago Junction line. A somewhat general idea of the value of the C., H. & D. to the Baltimore & Ohio from that standpoint can be gained from the following comparative interchange statement prepared from the records of the latter:

Calendar year.	Traffic received by B. & O. from C., H. & D.		Traffic delivered by B. & O. to C., H. & D.		Total.	
	Tons.	B. & O. revenue.	Tons.	B. & O. revenue.	Tons.	B. & O. revenue.
1909	217,194	$369,465	765,603	$804,076	982,797	$1,173,541
1910	326,291	546,436	1,066,035	1,007,541	1,392,326	1,553,977
1911	430,414	726,825	1,216,587	1,076,855	1,647,001	1,803,680
1912	631,761	885,930	1,925,264	1,630,328	2,557,025	2,516,258
1913	1,129,951	1,123,242	2,001,540	1,803,529	3,131,491	2,926,771
1914	919,298	1,038,751	1,627,454	1,586,674	2,546,752	2,625,425
1915	1,552,653	1,392,568	1,565,380	1,557,602	3,118,033	2,950,170

Of course an estimate can not be made of the amount of traffic really gained through the purchase of control, or of the actual value to the Baltimore & Ohio of this increased interchange. Attention is called to the Baltimore & Ohio committee's estimate in 1909 that the profit from such increased revenue would be 50 per cent of the gross. It should be borne in mind that new interchange relations frequently disturb the old to such an extent as to cause retaliation by other lines, formerly the favored connections. The benefits accruing to the Baltimore & Ohio through its purchase of control would seem

to be confined to net increase in interchange, and to keeping the property from falling into the hands of a rival carrier. These considerations become negligible when the cost to the Baltimore & Ohio of the entire undertaking is considered.

From the standpoint of actual and anticipated outlay the cost to the Baltimore & Ohio of its investment in the C., H. & D. will be about as follows, if the $16,250,450 of new Baltimore & Ohio Toledo-Cincinnati division bonds are considered an obligation of the proposed new company, and that appears to be the ultimate form they will take as contemplated in the reorganization plan. To the advances of $22,695,143 to June 30, 1915, as already mentioned, there has been added in the year ended June 30, 1916, $11,235,988, including sums used for the redemption of part of the C., H. & D. general mortgage bonds of 1909. These make the actual expenditures to June 30, 1916, $33,931,131, to which anticipated additional payments of $5,329,700 are to be added as follows:

Acquisition of remaining outstanding general mortgage bonds of 1909	$1,309,700
Settlements with branch-line bondholders[1]	1,311,870
Payment to J. P. Morgan & Co. for C., H. & D. common stock	2,530,000
Payments to minority stockholders	178,130
Total	5,329,700

The aggregate actual and anticipated expenditures will, therefore, be about $39,260,831, for which the Baltimore & Ohio will have secured the somewhat uncertain profits from increased interchange; the entire stock, amount not fixed, and the entire issue of adjustment and improvement mortgage bonds, amount not fixed, of the proposed new company; 7,501 shares of Southwestern Construction Company stock; and the obligation of J. P. Morgan & Company of a net value of $1,867,800 in their purchase of Pere Marquette stock. The last two items are those mentioned on page 210, *ante*, as of an estimated value of $3,368,000, which, if deducted from the aggregate expenditures before mentioned, $39,260,831, leaves $35,892,323 as the approximate net ultimate investment in a company which will own about 227 miles of railroad, already bonded for $21,250,450, and which will hold a perpetual lease on 141 additional miles on which fixed charges will amount to $305,728 per annum, or, at 5 per cent, a constructive capitalization of $6,114,560. These interest-bearing obligations against the owned and leased mileage of the proposed new company, $27,365,010, average $74,361 per mile. It will be necessary for the earnings to provide for the interest aggregating $1,195,746 per annum on this capitalization, and for other fixed

[1] Unexplained item appearing in last annual report of the Baltimore & Ohio on file with this Commission.

charges, before any payments can be made to the Baltimore & Ohio representing to it an earning on its approximate net investment of $35,892,323, or an average of $97,533 per mile additional. It remains to be seen what margin the earnings of the new company will provide to give value to its stock and junior bonds which are to belong to the Baltimore & Ohio. The latter in the fiscal year 1916 estimated the value of those securities at $25,000,000 and wrote off against its profit and loss account the difference, $10,892,323, between that value and the approximate net ultimate investment, $35,892,323, previously described. These figures do not take into consideration the interest from July 1, 1913, on this investment. To June 30, 1916, the minimum accrual at 5 per cent would aggregate $3,274,000. The Baltimore & Ohio has not entered accrual of this interest in its income for the three years named, so that no adjustments on that account will be necessary. But it should not be overlooked that this interest and that accruing year by year on the net aggregate investment has represented and will continue to represent a drain on Baltimore & Ohio earnings to the extent that it is not offset by increased interchange and profits received from the reorganized company.

XIII. PHYSICAL CONDITION OF C., H. & D., 1904–1916.

An inspection of the physical property of the C., H. & D. was made during the months of November and December, 1914, and January, 1915, by engineers of the division of valuation of the Commission in order to ascertain its condition, as required by the order instituting this proceeding. This inspection was made in the same way as in the case of the Pere Marquette; that is, the engineers made their inspection of roadway and track structures while traveling over the line in a motor car, being accompanied at all times by a division engineer of the company. Equipment, depot buildings, shop facilities, and engine-house facilities were separately examined, and the work was supplemented by use of the company's records pertaining to construction and maintenance.

The report of the engineers was submitted to the C., H. & D. in advance of hearing and was later incorporated in the record of this proceeding. It covers in detail the physical condition of the various elements of the road and equipment and includes a general summary to the effect that the property at the time of the inspection was somewhat below customary railroad operating condition. Although the roadway and track structure would average about the usual condition, the motive power, rolling stock, shop facilities, and machinery were so much below proper condition that the property as a whole was not up to what it should have been. There was evidence of some improvement and betterments in recent years since 1910, but

they were not extensive. It was also found that maintenance in the 9 or 10 years preceding 1914 had been less than was needed to keep the property in fair operating condition.

The roadway and track structures on the more important lines, being those from Cincinnati to Toledo and from Hamilton to Indianapolis, were found above the usual condition, but on the lines of lesser importance, particularly the Delphos division from Delphos to Ironton, were found so much below normal condition as to render the average only fair. The severest criticism, perhaps, was of the equipment and shop facilities. The equipment of all classes, locomotives, passenger cars, and freight cars, was generally in a run-down condition. Shop facilities were quite uniformly inadequate, and this, with the lack of proper engine-house facilities, was reported as largely responsible for the inefficient character of engine maintenance.

The C., H. & D. in April, 1913, suffered considerable damage from the Ohio and Indiana floods, as previously noted. The result was that for a year thereafter betterment and improvement programs had to be postponed in order to take care of extraordinary work necessary to repair flood damage. Also, the inspection was made in the midst of the business depression which quite generally affected the carriers in that territory from the close of the year ended June 30, 1913, until the spring of 1915, and caused some curtailment in expenditures.

In the opinion of the engineers the insufficient maintenance ran back something like 9 or 10 years, in other words, to about the close of the Woodford-Shoemaker régime. That management seems to have been ultraconservative; it had not quite kept up with the changed traffic conditions of its later years, and had not, in 1902, 1903, and 1904, followed the example of its competitors and enlarged its equipment and facilities generally. When the Zimmerman-Hollins management began in 1904, it purchased a large number of new and heavier locomotives and freight cars. That program necessarily called for heavier rails, ties, and bridges, and a generally bettered track structure throughout; failing this, considerably increased expenditures for maintenance would have resulted. The operating expense accounts of the C., H. & D. over these years indicate that beginning with the new management in July, 1904, there were greatly increased expenditures per mile of road for maintenance of way and equipment. But, in the opinion of the Commission's engineers, such expenditures were by no means as heavy as were necessary to keep the property up to the standard of maintenance which had evidently been followed in the previous years.

To put it shortly, there was a policy of deferred maintenance, particularly on the lines of lesser importance, and as to shops and equipment. The records as to the labor and materials applied to the property are not so complete on the C., H. & D. as on the Pere Marquette, but there is sufficient of record to show clearly that it was necessary in later years to take up much of what was not done in prior years. This is disclosed as to the track structure by the following statements of rail and tie renewals during the years from 1907 through 1915:

Statement showing tons of rail laid, 1907 to 1915, inclusive.

Year.	Toledo division.	Indianapolis division.	Delphos division.	Total.
1907	630	1,035	.....	1,665
1908	2,109	1,132	.....	3,241
1909	1,817	.....	.....	1,817
1910	4,803	1,276	.....	6,079
1911	850	953	.....	1,803
1912	980	1,120	.....	2,100
1913	1,570	2,415	.....	3,985
1914	750	72	.....	822
1915	8,056	550	.....	8,606

Statement showing number of ties put in, 1907 to 1915, inclusive.

Year.	Toledo division.		Indianapolis division.		Delphos division.		Total.	
	Main.	Side.	Main.	Side.	Main.	Side.	Main.	Side.
1907	109,493	33,684	112,233	11,258	38,865	9,357	260,951	54,299
1908	59,283	28,716	62,540	12,637	16,607	6,055	138,430	47,418
1909	90,785	30,525	92,357	14,128	38,698	7,954	221,840	52,607
1910	109,720	71,784	107,675	11,963	58,781	10,386	276,176	94,123
1911	86,984	56,659	117,769	18,197	94,365	17,681	299,118	92,537
1912	78,201	27,568	152,285	22,510	75,115	8,980	305,601	59,008
1913	88,350	33,350	140,647	17,333	89,594	6,922	318,591	57,605
1914	118,803	26,496	161,046	17,202	101,871	9,168	374,220	52,866
1915	177,499	63,080	92,402	16,743	124,191	19,563	394,092	99,336

The condition of the company's locomotives is shown in the next table, for quarterly periods beginning with March 31, 1907, so far as available records permit such a showing:

Quarterly period.	Locomotives.			
	Owned.	Awaiting condemnation.	Awaiting shop.	In shop.
Mar. 31, 1907	240	6	5	19
June 30, 1907	238	4	2	20
Sept. 30, 1907	234	5	1	19
Dec. 31, 1907	230	5	3	19
Mar. 31, 1908	225	1	1	18
June 30, 1908	225	1	1	16
Sept. 30, 1908	225	1	0	13
Dec. 31, 1908	225	1	2	15
Mar. 31, 1909	225	1	4	20

Quarterly period.	Locomotives.			
	Owned.	Awaiting condemnation.	Awaiting shop.	In shop.
June 30, 1909	235	1	4	17
Sept. 30, 1909	235	1	4	17
Dec. 31, 1909	234	1	4	22
Mar. 31, 1910	234	3	5	18
June 30, 1910	255	6	1	11
Sept. 30, 1910	260	6	8	20
Dec. 31, 1910	260	10	17	15
Mar. 31, 1911	260	11	14	20
June 30, 1911	260	14	[1]	[1]
Sept. 30, 1911	247	1	[1]	[1]
Dec. 31, 1911	247	1	[1]	[1]
Mar. 31, 1912	246	20	[1]	[1]
June 30, 1912	246	20	20	20-[2]
Sept. 30, 1912	246	24	16	18-[2]
Dec. 31, 1912	246	26	19	12-[2]
Mar. 31, 1913	246	26	17-[2]	17-[2]
June 30, 1913	232	26	13	12
Sept. 30, 1913	232	32	13-[2]	20
Dec. 31, 1913	232	35	18-[2]	8
Mar. 31, 1914	232	35	15-[2]	16-[2]
June 30, 1914	232	35	15	17
Sept. 30, 1914	229	34	14	15
Dec. 31, 1914	195	.....	21	14
Mar. 31, 1915	195	.....	15	16
June 30, 1915	195	.....	24	18
Sept. 30, 1915	191	.....	9	18
Dec. 31, 1915	181	.....	6	13

[1] Records missing. [2] At B. & O. shops; not included in total.

It will be seen from the foregoing that the locomotive condition ran down beginning in 1910. It was in that year that the last motive power was purchased by the C., H. & D. The situation was at its worst just about the time that the inspection was made by the engineers of the Commission. Thereafter came considerable improvement, and on December 31, 1915, only 19 locomotives were in or awaiting shop out of 181 owned, and there were none on the condemned list. During all this time, however, the C., H. & D. possessed adequate motive power facilities, an arrangement having been made with the Baltimore & Ohio whereby the latter road leased to it some 40 engines.

The statistics as to bad-order cars are not available back of September 30, 1912. At that time the company owned 10,988 freight cars of all classes, a decrease of almost 2,000 from its high point in 1908. The statement below shows the bad-order record quarterly beginning September 30, 1912, through December 31, 1915:

Freight cars.

Quarterly period.	Owned.	Awaiting condemnation.	Authorized condemned.	Awaiting repairs.
Mar. 31, 1907	[1]	[1]	[1]	[1]
June 30, 1907	[1]	[1]	[1]	[1]
Sept. 30, 1907	10,342	[1]	[1]	[1]
Dec. 31, 1907	[1]	[1]	[1]	[1]
Mar. 31, 1908	[1]	[1]	[1]	[1]
June 30, 1908	12,800	[1]	[1]	[1]

[1] Unavailable.

Freight cars—Continued.

Quarterly period.	Owned.	Awaiting condemnation.	Authorised condemned.	Awaiting repairs.
Sept. 30, 1908	12,754	[1]	[1]	[1]
Dec. 31, 1908	12,676	[1]	[1]	[1]
Mar. 31, 1909	12,651	[1]	[1]	[1]
June 30, 1909	12,622	[1]	[1]	[1]
Sept. 30, 1909	12,609	[1]	[1]	[1]
Dec. 31, 1909	12,486	[1]	[1]	[1]
Mar. 31, 1910	11,959	[1]	[1]	[1]
June 30, 1910	11,971	[1]	[1]	[1]
Sept. 30, 1910	11,887	[1]	[1]	[1]
Dec. 31, 1910	12,242	[1]	[1]	[1]
Mar. 31, 1911	12,427	[1]	[1]	[1]
June 30, 1911	12,309	[1]	[1]	[1]
Sept. 30, 1911	11,469	[1]	[1]	[1]
Dec. 31, 1911	11,432	[1]	[1]	[1]
Mar. 31, 1912	11,400	[1]	[1]	[1]
June 30, 1912	11,376	[1]	[1]	[1]
Sept. 30, 1912	10,988	302	548	691
Dec. 31, 1912	10,575	539	205	614
Mar. 31, 1913	10,261	133	406	772
June 30, 1913	9,847	161	146	950
Sept. 30, 1913	9,678	205	26	1,181
Dec. 31, 1913	9,624	375	26	1,403
Mar. 31, 1914	9,586	378	26	1,968
June 30, 1914	9,555	450	26	1,753
Sept. 30, 1914	9,081	68	138	1,628
Dec. 31, 1914	8,859	262	15	2,469
Mar. 31, 1915	8,780	202	69	2,491
June 30, 1915	8,682	255	354	2,263
Sept. 30, 1915	8,126	267	142	1,994
Dec. 31, 1915	6,294	46	54	856

[1] Unavailable.

The freight cars, it will be noted, reached their worst condition after the inspection by our engineers. Bearing in mind that in December, 1915, some 1,300 freight cars were turned back to the Cincinnati, Indianapolis & Western upon the latter's reorganization, the trend of the statement would indicate that prior to 1912, freight car maintenance and condemnation had been greatly deferred.

A further idea of the extraordinarily poor condition of the C., H. & D. equipment is found in the course of the hire of equipment balances. This is shown for the years 1907–1915 in the next statement, and is an indication that the company's equipment is far below its requirements.

Fiscal year ending June 30—	Equipment owned.			Hire of equipment, balance.	Gross earnings.
	Locomotives.	Passenger.	Freight.		
1907	234	215	13,563	[1] $291,317.23	$8,739,063
1908	225	215	12,800	[1] 322,095.51	8,011,483
1909	235	214	12,622	[2] 64,012.87	7,997,047
1910	260	212	11,961	[2] 106,427.60	9,446,524
1911	260	211	12,309	[2] 104,781.08	9,570,281
1912	246	203	11,376	[2] 183,863.36	9,825,320
1913	232	200	9,701	[2] 614,532.34	10,071,286
1914	232	195	9,537	[2] 984,665.85	10,084,317
1915	195	180	8,816	[4] 499,574.97	[3] 7,195,879

[1] Credit. [2] Debit. [3] Nine months. [4] Debit for nine months.

The increase of $425,668.98 in the loss of the year 1913 over that for 1912 is figured by the company to be accounted for as follows: Increased per diem rate, $122,105; locomotive rentals, $90,906; decrease in equipment owned, $127,677; account of flood conditions, etc., $84,980.98.

It should be added that at the time of the inspection by the Commission's engineers considerable betterment work was "programmed" and that in the year ended December 25, 1915, there had been put into the track 8,606 tons of rails, 191,542 tons of gravel ballast, 394,092 main-track ties and 99,336 sidetrack ties. These figures were far above the average for the previous seven years; as to the rail and ties, the performance surpassed every one of those seven years; as to the ballast, it was exceeded only by that of the year to December 25, 1909. There has also been an increase in the yard and passing track facilities, and 22 miles have been double tracked between Hamilton and Dayton. New shops have been built at both these latter points, and shop facilities and tools have been improved quite generally. New turntables have been put in at Dayton and at Lima, and at Lima and Hamilton new coaling stations have been erected. In these same months, all the passenger equipment has been put through the shop, and in the spring of 1916, was testified to be in good shape.

SUMMARY AND CONCLUSIONS.

In assembling the facts upon which the foregoing recital is based the Commission, through its valuation accountants, had access to and inspected, prior to hearing, the accounts, records, and memoranda, including correspondence files, of the two respondents and three other railroads. Similar examination was made of accounts, records, and memoranda in the files of five banking institutions bearing on the transactions under investigation, and a restricted inspection was made of such papers on file with two other banking institutions. These various examinations were conducted in seven cities. Examination was also made of the files of state railroad commissions, and recourse was had to records and decisions in court cases. Without the use of all such data it would have been impossible to construct this report.

This sordid tale has been told without adjectives. The facts speak for themselves, and they have been given in all their nakedness, without other comment than such as would serve to tie them to other facts, also of record.

Up to June 30, 1904, the railroad operation of the C., H. & D. was highly successful, particularly as contrasted with that of the

Pere Marquette. The former was thus enabled to carry along unsuccessful subsidiaries, by advancing moneys to meet their needs, and was strong enough to bear the losses which had resulted from the manipulations of Ives and his associates in the late eighties. The predecessors of the latter were subjected to successive receiverships and reorganizations in the endeavor to escape from operating deficits. In the old C., H. & D. dividends were the rule. With the predecessors of the Pere Marquette they were the exception.

Inflations of capital stock were incidents of the C., H. & D. consolidation in 1895 and of the Pere Marquette consolidation in 1900. This inflation was greater in the C., H. & D. than in the Pere Marquette because of their respective financial conditions. In neither case was it defensible.

The Pere Marquette after its organization in 1900 received three years of fair treatment from the Crapo-Thayer interests with some betterment of the property. But during the next 18 months it suffered at the hands of the Prince interests, who denied it proper maintenance, and so manipulated its accounts as to give color to their claim that it was earning the dividends on common stock which they paid. The new C., H. & D., after its organization in 1895, had continued its successful career despite the inflation of its stock. It regularly earned and paid its preferred dividends, accumulated a substantial surplus, and reached June 30, 1904, with its property in good condition, although not so up to date as that of some of its competitors.

Of the Prince interests it must be said that while their earlier Pere Marquette transactions are properly within the competence of an administrative tribunal, only a court of criminal jurisdiction could adequately deal with their subsequent transactions as to both of these roads. This taint of criminality attaches to many of their associates in the C., H. & D. syndication of May 19, 1904, and even more to their successors in C., H. & D. control, the Zimmerman-Hollins combination of interests, including the leaders of the Toledo and St. Louis syndicates who promoted the Toledo Railway & Terminal Company.

It is difficult to comment upon what was done to these properties in 1904 and 1905 without applying to those who did it the terms which they richly merit. The promoters of the C., H. & D. syndicate of May 19, 1904, did not hesitate to wield the club of expected corporate control in order to force necessary subscriptions. Nor did they hesitate to pledge the credit of the C., H. & D. and Pere Marquette to further their own schemes. Only in degree were their acts less criminal than those perpetrated by their successors, the Zimmerman-Hollins combination. The latter stopped at nothing, took every

chance, and succeeded in their astounding coup of unloading their C., H. & D. holdings upon J. P. Morgan & Company at $160 per share, when the C., H. & D. and its controlled lines were then ready to fall of their own weight.

It was in this connection that J. P. Morgan & Company became active in C., H. & D.-Pere Marquette affairs. That firm had for years been interested in the C., H. & D., having held some 23,000 shares of its common stock, or about one-seventh of its voting power, from 1901 up to July, 1904, when 20,000 shares were sold to the C., H. & D. syndicate. It has been the endeavor of Morgan & Company throughout this proceeding to prove that they were not aware of the actual condition of these two roads when J. P. Morgan made the suggestion to president Underwood of the Erie which resulted in the latter's purchase of the Hollins holdings of C., H. & D. stock. We have stated in detail the many facts of record to the contrary. With all that the record shows as to the "free hand" of the Erie in making this purchase of the C., H. & D., we find no reason to doubt that it was the Morgan influence in Erie affairs which dictated that purchase, and the Harriman influence which so soon thereafter forced Morgan to release the Erie from its bad bargain. Through that recission of its contract of purchase the Erie escaped all loss.

It has been suggested that Morgan & Company's participation in the Erie purchase could be readily understood if they were the principals for whom H. B. Hollins & Company had acted throughout. This record contains no evidence to indicate such agency; and its existence was unqualifiedly denied by the representative of J. P. Morgan & Company who appeared before us.

Next came the receiverships of December 4, 1905. The two roads secured from these and from the reorganizations which followed no substantial relief. Their properties were not rehabilitated to overcome the lack of proper maintenance under the prior maladministration, and there was no permanent reduction effected in fixed charges to offset what had been loaded on them by the Prince-Zimmerman-Hollins cliques. In the case of the Pere Marquette, fixed charges were actually increased in a reorganization which had as its basis the consolidation of the parent company and its Indiana subsidiary of 20 miles in length. That consolidation was the excuse for further inflation of the capital stock by using treasury shares as a bonus to a new issue of funded debt and for writing up as a part of the cost of road and equipment of the "new" company some $5,000,000 of worthless assets of the old. These "assets" included the direct losses suffered in the Prince-Zimmerman-Hollins exploitation. Those then in control of the Pere Marquette and its Indiana subsidiary petitioned for and secured the approval of that

consolidation by the Michigan Railroad Commission, alleging in their petition and otherwise advising that body that the capital stock outstanding would not be increased.

Commenting upon the fact that the carriers in *The Five Per Cent Case*, *supra*, adopted the book value as the nearest and most accurate reflection of the value of railroad properties devoted to public service obtainable at the present time, we said in 31 I. C. C., at pages 361 and 362:

> The nature and unreliability of the property investment accounts of carriers have frequently been commented upon by the Commission. * * * While the property investment accounts are used herein for the purposes of comparison, it must be understood that they are not accepted by the Commission as evidence either of the actual cost or the present value of these properties.

Transactions such as that just mentioned, whereby some $5,000,000 of worthless accounts become "cost of road and equipment" by a few strokes of the pen, justify our refusal to accept property investment accounts as establishing actual cost. The history of the Pere Marquette abounds with situations productive of similar improper charges to such accounts. The consolidation of 1900 furnished the pretext to inflate cost of road and equipment by $4,290,230.41. In the case of the C., H. & D., the extensive stock watering of 1895 was very largely offset by charges to property investment accounts. The heavy expenses incident to the manipulations of 1904–1905 were for several years reported to this Commission as "cost of road and equipment"; in fact, it was not until the assumption of C., H. & D. control by the Baltimore & Ohio that such expenses were charged to profit and loss.

In the case of the C., H. & D., the reorganization was entirely predicated upon the sale by Morgan & Company to the Baltimore & Ohio of C., H. & D. stock control and was characterized by the funding of defaulted interest and heavy expenses in order to avoid foreclosure and loss to the principal stockholder.

With respect to this purchase of Morgan holdings of C., H. & D. stock by the Baltimore & Ohio, our conclusions are based on what the record fails to explain as well as on what it does explain. The purchase was undertaken in the face of a most unfavorable report upon both present condition and future prospects, made by a Baltimore & Ohio official who had investigated the C., H. & D. at the instance of his directors. It may be that the directors chose to substitute their judgment for that of their representative. But we find nothing to explain why the purchase was still persisted in and carried through when the failure of negotiations with certain C., H. & D. security holders made necessary the assumption by the Baltimore & Ohio of obligations not theretofore anticipated, and the increase of the burden

of interest charges to an extent which more than offset its original expectations of profit from this C., H. & D. venture.

It is manifest that the formal recitals as to the C., H. & D. purchase found in minutes of meetings of the executive committee and directors of the Erie, and of the executive committee, directors, and stockholders of the Baltimore & Ohio, contain only what it was considered necessary to record in justification of the course previously determined upon by those to whom executive committees, directors, and stockholders were alike considered subordinate. The approximate net ultimate investment of the Baltimore & Ohio in the C., H. & D. will be $35,892,323, not including three years' interest to June 30, 1916, aggregating at least $3,274,000 at the rate of 5 per cent. Of this $35,892,323 the sum of $10,892,323 has already been written off as lost by the Baltimore & Ohio. The interest was not written off because it was never entered on the books. Under the proposed plan of reorganization the Baltimore & Ohio will own all of the stock of the new C., H. & D. The latter will own about 227 miles of railroad, of which 59 are in the Cincinnati-Dayton section of the main line and the balance in branches, the physical condition of which is not so good as that of the main line. Much of the branch-line mileage is unproductive. It will also own a perpetual lease of another 141 miles, being the main line between Dayton and Toledo. The constructive capitalization of this 141 miles, based on the consideration named in the lease, would be $43,000 per mile. The actual capitalization of the 227 owned miles is $93,000 per mile. These figures, treated as those of a railroad owning 368 miles, give a per mile capitalization of $74,361, underlying the Baltimore & Ohio's investment of $35,892,323, or $97,533 per mile without including interest, an aggregate of $174,894 per mile.

Although the C., H. & D. at the time it was examined by the Baltimore & Ohio was carrying an asset of $13,750,000, representing its 110,000 common shares of the Pere Marquette, the latter was not made the subject of any inquiry by the Baltimore & Ohio. There is some ground for the belief that the subsequent purchase of those 110,000 shares by Morgan & Company was then in contemplation. Seemingly, also, the control of the Pere Marquette has been exercised by that house since the first receivership.

In the few years between its first and present receivership the Pere Marquette managed to pay its bond interest, but only at the expense of proper maintenance. Not until the year ended June 30, 1912, was there any really effective attempt made to keep up the property, and it is significant that the second receivership began on April 5, 1912. To such an extent were maintenance of the road, struc-

tures, and equipment postponed that one of the chief problems of the present receivership has been the rehabilitation of the property. That rehabilitation has been thorough and its good effect has been noticeable in increased safety and economy of operation.

The C., H. & D. also suffered the evils of deferred maintenance almost from the close on July 7, 1904, of the successful Shoemaker-Woodford management. After the Baltimore & Ohio took it there followed in the year ended June 30, 1910, a considerable improvement in the character of the maintenance. This did not continue and the result was like that on the Pere Marquette. Revenues were seemingly inadequate to care for both fixed charges and continued proper maintenance. The spring flood in 1913 contributed to the ultimate result, but was by no means its chief cause. A second receivership began on July 2, 1914, and, since January 1, 1915, the work of rehabilitating the more important sections has been going on.

The exploitation in 1903, 1904, and 1905 of the Pere Marquette and the C., H. & D. was not an incident of railroad construction. The properties had long been established. Whatever control or regulation of the issue of railroad securities was exercised by the states in which these roads operate was inadequate to prevent the exploiting or to forestall subsequent hasty and unwise reorganization. To the extent that these flotations ultimately lodged in the hands of innocent investors, whether here or abroad, the public was deeply wronged. Whatever control or regulation was had of the properties and operations of the two roads was not sufficient to keep them in condition to satisfactorily serve the population dependent upon them. The result has been the same with each, financial disaster to the carriers, serious loss to the holders of their securities, deterioration of their physical properties, and a marked impairment of ability to perform their functions as public servants.

Nothing disclosed in the record before us is to be more regretted than the readiness of great banking institutions in our financial centers to loan enormous sums of money upon exceedingly precarious security in aid of such schemes as have been devised in the wrecking of these railroads. Not only this, but the high officers of such institutions, while acting ostensibly as directors of the railroads, have in fact been little more than tools and dummies for the promoters. The trustees of other people's money seem to have had little compunction about violations of their trusts for the benefit of the promoters, and at their demand.

Can the like of what has befallen these two roads be made impossible hereafter? Perhaps not entirely, so long as financial circles continue complaisant toward financial exploitations which prove suc-

cessful. But it will help if minority stockholders are more watchful of their interests and if bondholders assert their rights before their security fades away for lack of upkeep, purposely neglected in order to pay interest and dividends unearned. It would, in our opinion, render such exploitation more difficult if the issuance and marketing of all securities of common carriers were subject to federal regulation. As to that we renew the recommendations repeatedly made to the Congress in our annual reports. We also point to the lesson, here again taught, that access to correspondence files is indispensable for a thorough and accurate understanding of the motives and purposes which underlie the formal entries made in accounts and records.

Unwise management contributed to the downfall of these roads, but breach of trust by corporate officials, often for personal gain, was the main cause here, as in the records developed in other investigations. *Consolidations and Combinations of Carriers*, 12 I. C. C., 277; *The New England Investigation*, 27 I. C. C., 560; *St. Louis & San Francisco Railroad Investigation*, 29 I. C. C., 139; *Financial Investigation of N. Y., N. H. & H. R. R. Co.*, 31 I. C. C., 32; *Financial Transactions C., R. I. & P. Ry. Co.*, 36 I. C. C., 43. That downfall, with its deplorable consequences, can be traced only to betrayal within, and not to compulsion from without. Neither rivalry, nor rate level, nor regulation, nor all combined, can be found on this record to have contributed in any appreciable degree to the disaster.

In discussion of transportation conditions during the last two years or more much has been made of the fact that over 40,000 miles of our railroads were under receivership. A recent publication lists 69 railroads, among them the Pere Marquette and C., H. & D., as in the hands of receivers on December 31, 1916. Their combined operations cover 34,559 miles. Over 40 per cent of that mileage is in systems which, as shown by our investigations, have suffered principally from financial mismanagement and exploitation. Over 40 per cent more, of which a large part is located in Texas, is comprised in two southwestern systems. The remaining 5,800 miles are distributed among fifty-odd carriers in different parts of the country.

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·porate history chart, Pere Marqu

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go & Illinois Southern R. R. Co.
b. 20, 1871–May 6, 1872.§ 2)

Mount Vernon & Grayville R. R. Co.
(Jan. 2, 1868–Feb. 20, 1871.§ 1)

Grayville & Mattoon R. R. Co.
(Feb. 6, 1857–Feb. 20, 1871.§ 2)

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APPENDIX 6.—*Pere Marquette Railroad Company.*

DIVIDENDS PAID BY FLINT & PERE MARQUETTE, DETROIT, GRAND RAPIDS & WESTERN, AND CHICAGO & WEST MICHIGAN, AND BY THEIR PREDECESSORS, UP TO DEC. 31, 1899.

	Year.	Kind of stock.	Par receiving dividends.	Per-centage rate.	Amount paid.	Total.
Port Huron & Northwestern Ry.	1882	Common....	$1,090,000.00	6.0	$65,400.00	$65,400.00
Flint & Pere Marquette R. R.	1881	Preferred....	6,341,500.00	2.5	158,537.50	
Do	1881	.....do.....	6,342,000.00	3.0	190,260.00	
Do	1882	.....do.....	6,342,000.00	6.5	412,114.00	
Do	1883	.....do.....	6,341,900.00	7.0	443,933.00	
Do	1884	.....do.....	6,342,000.00	7.0	443,940.00	
Do	1885	.....do.....	6,342,000.00	4.0	253,680.00	
Do	1886	.....do.....	6,342,000.00	5.0	317,100.00	
Do	1887	.....do.....	6,342,000.00	6.5	412,230.00	
Do	1888	.....do.....	6,342,000.00	7.0	443,940.00	
Do	1889	.....do.....	6,342,000.00	6.0	380,520.00	
Do	1890	.....do.....	6,342,000.00	5.0	317,100.00	
Do	1891	.....do.....	6,342,000.00	4.0	253,680.00	
Do	1892	.....do.....	6,342,000.00	4.0	253,680.00	
Do	1899	.....do.....	6,342,000.00	1.0	63,420.00	
Do	1899	.....do.....	6,342,000.00	2.0	126,840.00	
						4,470,974.50
Detroit, Lansing & Northern R. R.	1878	.....do.....	2,481,200.00	2.0	49,624.00	
Do	1879	.....do.....	2,502,700.00	6.0	150,042.00	
Do	1879	.....do.....	2,502,500.00	3.5	87,587.50	
Do	1880	.....do.....	2,502,000.00	3.5	87,605.00	
Do	1880	.....do.....	2,502,100.00	3.5	87,608.50	
Do	1880	Common....	1,825,000.00	3.5	63,875.00	
Do	1880	.....do.....	1,825,400.00	2.5	45,635.00	
Do	1881	Preferred....	2,502,300.00	7.0	175,231.00	
Do	1882	.....do.....	2,502,300.00	7.0	175,231.00	
Do	1883	.....do.....	2,502,300.00	3.5	87,615.50	
Do	1883	.....do.....	2,510,000.00	3.5	87,850.00	
Do	1883	Common....	1,825,500.00	6.0	109,530.00	
Do	1884	Preferred....	2,510,000.00	7.0	175,700.00	
Do	1884	Common....	1,825,500.00	6.0	109,530.00	
Do	1885	Preferred....	2,510,000.00	5.5	138,050.00	
Do	1886	.....do.....	2,510,000.00	8.5	213,350.00	
Do	1887	.....do.....	2,510,000.00	7.0	175,700.00	
Do	1887	Common....	1,825,500.00	3.0	54,765.00	
Do	1888	Preferred....	2,510,000.00	3.5	87,850.00	
						2,162,379.50
Detroit, Grand Rapids & Western R. R.	1899	.....do.....	3,177,800.00	3.0	95,334.00	
Do	1899	.....do.....	3,182,000.00	3.0	95,460.00	
						190,794.00
Chicago & West Michigan R. R.	1881	Common....	6,142,900.00	2.5	153,572.50	153,572.50
Chicago & West Michigan Ry.	1881	.....do.....	6,143,200.00	2.5	153,580.00	
Do	1882	.....do.....	6,150,200.00	3.0	184,506.00	
Do	1883	.....do.....	6,148,600.00	2.0	122,972.00	
Do	1884	.....do.....	6,150,200.00	3.5	215,247.00	
Do	1885	.....do.....	6,147,825.00	2.0	122,956.50	
Do	1886	.....do.....	6,141,580.00	2.5	153,539.50	
Do	1887	.....do.....	6,165,450.00	2.0	123,309.00	
Do	1888	.....do.....	6,150,200.00	2.0	123,004.00	
Do	1889	.....do.....	6,150,200.00	2.0	123,004.00	
Do	1890	.....do.....	6,638,200.00	4.0	265,528.00	
Do	1891	.....do.....	6,637,600.00	1.5	99,564.00	
Do	1891	.....do.....	6,638,650.00	2.0	132,773.00	
Do	1892	.....do.....	6,638,200.00	1.5	99,573.00	
Do	1892	.....do.....	7,448,200.00	1.5	111,723.00	
						2,031,279.00
Total						9,074,399.50

APPENDIX 7.—*Pere Marquette Railroad Company.*

DIVIDEND PAYMENTS, JAN. 1, 1900, to JUNE 30, 1914.

Year 1900: 4 per cent on $12,000,000 preferred stock	[1] $480,000.00
Year 1901:	
2 per cent on $10,510,100 preferred stock	210,202.00
2 per cent on $10,512,200 preferred stock	[2] 210,244.00
Year 1902:	
2 per cent on $10,510,300 preferred stock	210,206.00
2 per cent on $10,510,500 preferred stock	210,210.00
Year 1903:	
2 per cent on $10,510,500 preferred stock	[3] 210,046.00
2 per cent on $10,509,600 preferred stock	210,192.00
2 per cent on $14,165,200 common stock	283,304.00
Year 1904:	
2 per cent on $10,509,700 preferred stock	210,194.00
2 per cent on $10,509,800 preferred stock	210,196.00
1 per cent on $14,165,300 common stock	141,653.00
Year 1905:	
2 per cent on $10,512,200 preferred stock	[4] 210,244.00
3½ per cent on $3,165,550 common stock	[4] 110,794.25
Total	2,907,485.25

[1] Includes dividend of $59,644 on $1,491,100 preferred stock in hands of reorganization committee, credited to general improvement fund.

[2] Includes dividend of $36 on $1,800 fractional shares, credited to general improvement fund.

[3] Includes adjustment of $164 account errors in computing shares outstanding in previous dividends.

[4] Dividends for 1905 were charged to Cincinnati, Hamilton & Dayton Ry. Co. under terms of lease agreement dated March 1, 1905, at which time the Cincinnati, Hamilton & Dayton Ry. Co. owned $11,000,000 par value common stock of the Pere Marquette R. R. Co., in addition to holding $1,487,800 par value preferred and $1,834,450 par value common treasury stock.

APPENDIX 8.

MANIPULATION OF FINANCES OF CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY BY HENRY S. IVES AND ASSOCIATES.

The accounts and records of the carrier do not yield sufficient facts from which to construct a connected, complete, and accurate story of the various acts of Henry S. Ives and his associates during the period of their control of the C., H. & D. or of the adjustment of the latter's financial difficulties which resulted therefrom. The only sources from which a narrative of the transactions involving the C., H. & D. can be obtained are the annual reports to its stockholders, and, as indicated by the following abstract thereof, those reports do not completely set forth the situation.

Apparently Ives's C., H. & D. transactions were a part of schemes involving other and larger properties. He and his associates gained control of the C., H. & D. in the spring of 1886. At a stockholders' meeting on June 15, 1886, they exercised their control by the election of their nominees as directors, officers, and members of the executive committee. Ives was elected a director, vice president, and member of the executive committee; George H. Stayner, one of his partners in the firm of Henry S. Ives & Company, was elected a director, president, and member of the executive committee; and E. Wilson Woodruff, a former partner of Ives and then a clerk in his service, was elected secretary and treasurer. The activities of Ives and Stayner extended to the time of their resignations as officers on August 9, 1887, and as directors on the following September 10, 1887, after an investigation of the company's affairs by a committee representing the minority stockholders.

This committee found that in this short time the following changes had occurred affecting the company's financial stability:

The common stock had been increased by $500,000 par value.

The series "A" and "B" preferred stock had been increased by $551,000 par value.

An entirely new issue of preferred stock has been put out to the amount of $10,000,000 par value.

The issue of 5 per cent consolidated sinking fund bonds had been increased by $64,000.

A new issue of 4½ per cent second mortgage bonds had been put out to the amount of $2,000,000 par value.

Common stock of the company in its treasury amounting to $2,800 had passed out of the possession and control of the company, as had also $65,000 par value of 7 per cent second mortgage bonds of the Cincinnati, Richmond & Chicago Railroad and $1,898,100 (27,962 shares) of common stock of the Dayton & Michigan Railroad, owned by the C., H. & D.

To represent this enormous increase of liabilities and the appropriation and conversion of securities owned by the company, amounting to about $14,500,000 par value, the C., H. & D. had, on August 9, 1887, betterments of its road, real estate, and additional equipment representing expenditures of less than $1,000,000; it had paid W. R. McKeen, of Terre Haute, Ind., $889,500 on account of a purchase of the controlling interest in the Terre Haute & Indianapolis

Railroad; and it had credit on the books of Henry S. Ives & Company for upward of $12,000,000 subject to check on demand. When that firm made an assignment on August 11, 1887, for the benefit of creditors its assets included less than $1,000 in cash.

Following the committee's investigation Stayner resigned the presidency and Ives the vice presidency on August 9, 1887, and changes were gradually brought about in the board of directors until September 10, 1887, when Stayner and Ives resigned as directors and the board became representative of the new management. The new directors promptly took various steps for the protection of the company and for recovery from the firm of Henry S. Ives & Company of whatever might be secured.

Indictments were returned in April, 1889, against Ives and Stayner based on the overissue of C., H. & D. common stock in June, 1886, to the amount of $710,000. The increase in common stock from $3,500,000 to $4,000,000 authorized by the board in November, 1886, and by the stockholders in February, 1887, gave Ives & Company the opportunity, of which they promptly availed themselves, to substitute about $480,000 of legally issued common stock for a similar amount of their overissue. They subsequently canceled an additional $230,000 of the overissue which they held, so that the amount outstanding of C., H. & D. common was reduced to the legal limit of 40,000 shares. Ives was brought to trial in September, 1889, but the jury disagreed.

It was found that the $65,000 of Cincinnati, Richmond & Chicago bonds had been taken from the company's safe and hypothecated as security for loans of the firm of Henry S. Ives & Company. Of the 27,962 shares of Dayton & Michigan common stock which the C., H. & D. owned Ives & Company had sold 22,500 shares, had hypothecated 5,000 shares for the firm's loans, and had attempted to hypothecate an additional 400 shares, but were frustrated when the certificates were presented for transfer, so that 462 shares were saved for the company. An unsuccessful attempt was made in September, 1888, to convict Stayner and Ives on an indictment charging them with the larceny of the Dayton & Michigan stock, but on a question of jurisdiction the court directed a verdict in their favor.

The new directors instituted a civil suit in the state of New York in January, 1889, and caused the arrest of Ives and Stayner under the statute of that state in an action for damages, indictments also being returned against them on charges of criminal offenses as officers of the company. They remained in jail until the end of March, 1890, when they were released on bail.

The new board of directors promptly denied the validity of the entire issue of $10,000,000 of preferred stock put out during the Ives régime and instituted proceedings to have the entire issue set aside as illegal and void. It found $5,259,400 of this stock in the possession of Ives & Company, who claimed to have purchased it, and, receiving it from them, the board immediately canceled it. A decree was obtained in the court of common pleas of Hamilton county, Ohio, canceling about $2,000,000 of the remainder, and over $1,527,400 was obtained, together with certain other securities, in exchange for $657,200 par of a new issue of 4 per cent guaranteed preferred stock of the so-called "Eagle" series.

With the intention of giving the C., H. & D. control of a line to St. Louis, the board on May 30, 1887, had authorized vice president Ives to purchase 20,000 shares, par value $50, of the total outstanding issue of 39,762 shares of stock of the Terre Haute & Indianapolis Railroad Company at a price not to exceed $100 per share. Between June 1 and 4, 1887, $889,500 was provided in cash and paid to W. R. McKeen, it being understood that 11,160 shares were

to come from him individually and that the other 8,840 shares were the property of the Terre Haute & Indianapolis. The 8,840 shares purchased from the railroad were transferred to Henry S. Ives, trustee, and were used by him as collateral for loans for his firm and in three instances for the Terre Haute & Indianapolis. Upon the assignment of Ives & Company, the new C., H. & D. directors found that all of the 8,840 shares were in the hands of persons who had advanced money thereon. The acquisition of the stock so pledged was undertaken by the directors. The 11,160 shares sold by McKeen individually had been left in his hands as security. Counsel having advised that the purchase from him was illegal, the company brought suit in the circuit court of the United States for the district of Indiana for the recovery of the $889,500 paid to him from the funds of the company.

In the pledging by Ives & Company of C., H. & D. assets and newly issued securities for firm loans other securities owned by them were also used as collateral. These and various other activities of that firm produced conditions so highly complicated that it was several years before the financial affairs of the C., H. & D. were straightened out. In this process of recovering its assets and of securing the cancellation of the spurious stock, other and new assets were acquired by the C., H. & D., the then value of which can not be determined. For this reason, and also because of the meager details furnished by the accounting records, it has not been possible to determine the net losses suffered by the C., H. & D. through the Ives manipulation. It may be pointed out, however, that in March, 1890, the profit and loss account of the company was charged with $2,234,959.44 on account of Ives losses, and $89,755.90 for expenses of Ives litigations was similarly charged at various times. These charges were offset to the extent of $64,134 on account of that portion of a dividend on Ives stock withheld by the company.

In addition to the losses just stated, there were various sums included in two asset accounts up to June, 1896, which represented expenditures in this connection. One of these accounts covered the $889,500 paid out for Terre Haute & Indianapolis stock. That sum was written off in the month named, presumably against profit and loss, by one of the entries which made the adjustments incident to the 1895 consolidation. This entry also closed out the other account which had been originated on the books to record sums handled by the trustee charged with the settlement of the Ives transactions. This latter account seems to have been used as a clearing account both for those settlements and for related transactions, but sufficient details are not available to afford the basis for a satisfactory analysis thereof. The account included charges of $657,200 on account of the new issue of guaranteed preferred stock, "Eagle" series, put out to retire the Ives spurious stock; some $173,000 cash disbursed to retire that spurious stock; and over $400,000 of cash disbursed in settlement of Ives loans, claims, etc.

As previously stated, the C., H. & D. acquired other assets and settled other obligations in many of these disbursements. It is impossible to determine the proportion thereof representing losses on account of Ives's transactions. That these losses were very substantial is evident.

APPENDIX 9.—*Cincinnati, Hamilton & Dayton R. R. Co.*

STATEMENT SHOWING DIVIDENDS ON PREFERRED STOCK, SERIES "A" AND "B," TO JUNE 30, 1895.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1883	Income account[1]	1	$111,000.00	[1] $1,110.00	1	Cash.
Do	do.[1]	2	347,900.00	[1] 5,218.50	1½	Do.
Mar. 31, 1884	do.[1]	3	431,100.00	[1] 6,466.50	1½	Do.
Do	do.[1]	4	449,000.00	[1] 6,735.00	1½	Do.
Do	do	1	449,000.00	2,245.00	½	Do.
Do	do	2	449,000.00	2,245.00	½	Do.
Do	do	3	449,000.00	2,245.00	½	Do.
Do	do	4	449,000.00	2,245.00	½	Do.
Do	do	5	449,000.00	2,245.00	½	Do.
Do	do	6	449,000.00	2,245.00	½	Do.
Mar. 31, 1885	do	7	449,000.00	6,735.00	1½	Do.
Do	do	8	449,000.00	6,735.00	1½	Do.
Do	do	9	449,000.00	6,735.00	1½	Do.
Do	do	10	449,000.00	6,735.00	1½	Do.
Mar. 31, 1886	do	11	449,000.00	6,735.00	1½	Do.
Do	do	12	449,000.00	6,735.00	1½	Do.
Do	do	13	449,000.00	6,735.00	1½	Do.
Do	do	14	449,000.00	6,735.00	1½	Do.
Mar. 31, 1887	do	15	449,000.00	6,735.00	1½	Do.
Do	Cash and income accounts[2]	16	1,000,000.00	10,000.00	1	Do.
Do	Income account.	17	1,000,000.00	10,000.00	1	Do.
Do	do	18	1,000,000.00	10,000.00	1	Do.
Mar. 31, 1888	do	19	1,000,000.00	10,000.00	1	Do.
Do	do	20	1,000,000.00	10,000.00	1	Do.
Do	do	21	1,000,000.00	10,000.00	1	Do.
Do	do	22	1,000,000.00	10,000.00	1	Do.
Mar. 31, 1889	do	23	1,000,000.00	10,000.00	1	Do.
Do	do	24	1,000,000.00	10,000.00	1	Do.
Do	do	25	1,000,000.00	10,000.00	1	Do.
Do	do	26	1,000,000.00	10,000.00	1	Do.
Mar. 31, 1890	do	27	1,000,000.00	10,000.00	1	Do.
Do	do	28	1,000,000.00	10,000.00	1	Do.
Do	do	29	1,000,000.00	10,000.00	1	Do.
Do	do	30	1,000,000.00	10,000.00	1	Do.
Dec. 31, 1890[3]	do	31	1,000,000.00	10,000.00	1	Do.
Do[3]	do	32	1,000,000.00	10,000.00	1	Do.
Do[3]	do	33	1,000,000.00	10,000.00	1	Do.
Dec. 31, 1891	do	34	1,000,000.00	10,000.00	1	Do.
Do	do	35	1,000,000.00	10,000.00	1	Do.
Do	do	36	1,000,000.00	10,000.00	1	Do.
Do	do	37	1,000,000.00	10,000.00	1	Do.
Dec. 31, 1892	do	38	1,000,000.00	10,000.00	1	Do.
Do	do	39	1,000,000.00	10,000.00	1	Do.
Do	do	40	1,000,000.00	10,000.00	1	Do.
Do	do	41	1,000,000.00	10,000.00	1	Do.
Dec. 31, 1893	do	42	1,000,000.00	10,000.00	1	Do.
Do	do	43	1,000,000.00	10,000.00	1	Do.
Do	do	44	1,000,000.00	10,000.00	1	Do.
Do	do	45	1,000,000.00	10,000.00	1	Do.
Dec. 31, 1894	do	46	1,000,000.00	10,000.00	1	Do.
Do	do	47	1,000,000.00	10,000.00	1	Do.
Do	do	48	1,000,000.00	10,000.00	1	Do.
Do	do	49	1,000,000.00	10,000.00	1	Do.
June 30, 1895[4]	do	50	1,000,000.00	10,000.00	1	Do.
Do.[4]	do	51	1,000,000.00	10,000.00	1	Do.

[1] The amounts of dividends here shown are for the gross amount, which was reduced by the amount of interest accrued on stock when sold, the net amount being charged to income account. The figures are as follows:

	Gross amount of dividend.	Interest accrued on stock when sold.	Charge to income account.
Dividend No. 1	$1,110.00	$160.66	$949.34
Dividend No. 2	5,218.50	1,819.52	3,398.98
Dividend No. 3	6,466.50	138.97	6,327.53
Dividend No. 4	6,735.00	50.10	6,684.90

[2] Charge to cash was for $1,475.65, allowance of bank interest.
[3] Nine months' period ended Dec. 31, 1890.
[4] Six months' period ended June 30, 1895.

APPENDIX 9.—*Cincinnati, Hamilton & Dayton R. R. Co.*—Continued.

STATEMENT SHOWING DIVIDENDS ON PREFERRED STOCK, "EAGLE SERIES," TO JUNE 30, 1895.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1889	Income account.	1	$475,000.00	$4,750.00	1	Cash.
Do	....do	2	496,600.00	1,655.33	1	Do.
Mar. 31, 1890	....do			3,310.67		
Do	....do	3	496,600.00	4,966.00	1	Do.
Do	....do	4	521,600.00	5,216.00	1	Do.
Do	....do	5	553,600.00	5,536.00	1	Do.
Do	....do	6	553,600.00	1,845.33	1	Do.
Dec. 31, 1890[1]	....do			3,690.67		
Do.[1]	....do	7	573,900.00	5,739.00	1	Do.
Do.[1]	....do	8	587,900.00	5,879.00	1	Do.
Do.[1]	....do	9	587,900.00	1,959.67	1	Do.
Dec. 31, 1891	....do			3,919.33		
Do	....do	10	595,900.00	5,959.00	1	Do.
Do	....do	11	595,900.00	5,959.00	1	Do.
Do	....do	12	595,900.00	5,959.00	1	Do.
Do	....do	13	607,900.00	1,986.33	1	Do.
Dec. 31, 1892	....do			4,092.67		
Do	....do	14	613,900.00	6,139.00	1	Do.
Do	....do	15	613,900.00	6,139.00	1	Do.
Do	....do	16	613,900.00	6,139.00	1	Do.
Do	....do	17	613,900.00	2,046.33	1	Do.
Dec. 31, 1893	....do			4,092.67		
Do	....do	18	613,900.00	6,139.00	1	Do.
Do	....do	19	613,900.00	6,139.00	1	Do.
Do	....do	20	613,900.00	6,139.00	1	Do.
Do	....do	21	619,800.00	2,046.33	1	Do
Dec. 31, 1894	....do			4,151.67		
Do	....do	22	630,400.00	6,304.00	1	Do.
Do	....do	23	677,000.00	6,770.00	1	Do.
Do	....do	24	726,600.00	7,266.00	1	Do.
Do	....do	25	728,300.00	2,427.00	1	Do.
June 30, 1895[2]	....do			4,856.00		
Do.[2]	....do	26	742,100.00	7,421.00	1	Do.
Do.[2]	....do	27	742,100.00	[3] 2,473.66	1	Do.

STATEMENT SHOWING DIVIDENDS ON COMMON STOCK TO JUNE 30, 1895.

					Per cent.	
Mar. 31, 1853	Income account.	1	.....	$48,380.66	4	Cash.
Do	....do	2	$1,600,000.00	80,000.00	5	Do.
Mar. 31, 1854	....do	3	2,047,000.00	102,350.00	5	Do.
Do	Profit and loss..	4	2,100,000.00	105,000.00	5	Do.
Mar. 31, 1855	....do	5	2,100,000.00	105,000.00	5	Scrip certificates due Sept. 1, 1857, with 7 per cent interest.
Mar. 31, 1856	Reserve funds...	6	2,100,000.00	105,000.00	5	Capital stock, $54,100; cash, $50,900.
Mar. 31, 1857	Income account.	7	2,155,800.00	75,453.00	3½	Cash.
Do	....do	8	2,155,800.00	75,453.00	3½	Do.
Mar. 31, 1860	....do	9	2,155,800.00	75,453.00	3½	Do.
Do	....do	10	2,155,800.00	75,453.00	3½	Do.
Mar. 31, 1861	....do	11	2,155,800.00	75,453.00	3½	Do.
Do	....do	12	2,155,800.00	75,453.00	3½	Do.
Mar. 31, 1862	....do	13	2,155,800.00	75,453.00	3½	Do.
Do	....do	14	2,155,800.00	86,232.00	4	Do.
Mar. 31, 1863	....do	15	2,155,800.00	[4] 111,123.71	5 1/14	Do.
Do	....do	16	2,155,800.00	[4] 111,123.71	5 1/14	Do.
Mar. 31, 1864	....do	17	2,155,800.00	[4] 111,123.71	5 1/14	Do.
Do	....do	18	2,499,500.00	[5] 128,840.20	5 1/14	Do.
Mar. 31, 1865	....do	19	2,500,000.00	[6] 131,578.94	5 5/19	Do.
Do	....do	.....	2,500,000.00	500,000.00	20	Stock.
Do	....do	20	3,000,000.00	[7] 126,315.78	4 4/19	Cash.

[1] Nine months' period ended Dec. 31, 1890.
[2] Six months' period ended June 30, 1895.
[3] Balance of dividend No. 27 charged to income account of year ended June 30, 1896.
[4] Includes $3,333.71, government tax of 3 per cent on amount of dividend.
[5] Includes $3,885.20, government tax of 3 per cent on amount of dividend.
[6] Represents $100,000, dividend of 4 per cent on $2,500,000 paid stockholders; $25,000, government tax of 5 per cent on $500,000 stock dividend retained from amount due on cash dividend; $6,578.94, government tax of 5 per cent on this dividend amounting to $131,578.94.
[7] Includes $6,315.78, government tax of 5 per cent on amount of dividend.

APPENDIX 9.—*Cincinnati, Hamilton & Dayton R. R. Co.*—Continued.

STATEMENT SHOWING DIVIDENDS ON COMMON STOCK TO JUNE 30, 1895—Continued.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1866	Income account.	21	$3,000,000.00	$150,000.00	5	Cash.
Do.	do.	22	3,000,000.00	120,000.00	4	Do.
Mar. 31, 1867	do.	23	416,000.00	16,640.00	4	Do.
			2,584,000.00	129,200.00	5	Stock.
Do.	do.	24	497,200.00	19,888.00	4	Cash.
			2,632,000.00	131,600.00	5	Stock.
Mar. 31, 1868	do.	25	307,050.00	18,423.00	6	Cash.
			2,953,750.00	336,300.00	8	Stock.
Mar. 31, 1869	do.	26	3,500,000.00	175,000.00	5	Scrip redeemable in first mortgage bonds of D. & M. R. R. Co.
Do.	do.	27	3,500,000.00	175,000.00	5	Scrip redeemable in third mortgage bonds of D. & M. R. R. Co.
Mar. 31, 1870	do.	28	3,500,000.00	175,000.00	5	Scrip redeemable in third mortgage bonds of D. & M. R. R. Co., bearing interest from Oct. 1, 1869.
Do.	do.	29	3,500,000.00	140,000.00	4	Cash.
Mar. 31, 1871	do.	30	3,500,000.00	140,000.00	4	Do.
Do.	do.	31	3,500,000.00	140,000.00	4	Do.
Mar. 31, 1872	do.	32	3,500,000.00	140,000.00	4	Do.
Do.	do.	33	3,500,000.00	140,000.00	4	Do.
Mar. 31, 1873	do.	34	3,500,000.00	140,000.00	4	Do.
Do.	do.	35	3,500,000.00	140,000.00	4	Do.
Mar. 31, 1880	do.	36	3,500,000.00	122,500.00	3½	Do.
Mar. 31, 1881	do.	37	3,500,000.00	70,000.00	2	Do.
Mar. 31, 1883	do.	38	3,500,000.00	105,000.00	3	Do.
Do.	do.	39	3,500,000.00	105,000.00	3	Do.
Mar. 31, 1884	do.	40	3,500,000.00	105,000.00	3	Do.
Do.	do.	41	3,500,000.00	105,000.00	3	Do.
Mar. 31, 1885	do.	42	3,500,000.00	105,000.00	3	Do.
Do.	do.	43	3,500,000.00	105,000.00	3	Do.
Mar. 31, 1886	do.	44	3,500,000.00	105,000.00	3	Do.
Do.	do.	45	3,500,000.00	105,000.00	3	Do.
Mar. 31, 1887	do.	46	3,500,000.00	70,000.00	2	Do.
Do.	do.	47	3,500,000.00	70,000.00	2	Do.
Do.	do.	48	3,500,000.00	70,000.00	2	Do.
Do.	do.	49	4,000,000.00	[1] 80,000.00	2	Do.
Mar. 31, 1888	do.	50	4,000,000.00	[1] 80,000.00	2	Do.
Mar. 31, 1890	do.	51	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	52	4,000,000.00	50,000.00	1¼	Do.
Dec. 31, 1890[2]	do.	53	4,000,000.00	50,000.00	1¼	Do.
Do.[2]	do.	54	4,000,000.00	50,000.00	1¼	Do.
Do.[2]	do.	55	4,000,000.00	50,000.00	1¼	Do.
Dec. 31, 1891	do.	56	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	57	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	58	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	59	4,000,000.00	50,000.00	1¼	Do.
Dec. 31, 1892	do.	60	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	61	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	62	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	63	4,000,000.00	50,000.00	1¼	Do.
Dec. 31, 1893	do.	64	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	65	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	66	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	67	4,000,000.00	50,000.00	1¼	Do.
Dec. 31, 1894	do.	68	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	69	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	70	4,000,000.00	50,000.00	1¼	Do.
Do.	do.	71	4,000,000.00	50,000.00	1¼	Do.
June 30, 1895[3]	do.	72	4,000,000.00	50,000.00	1¼	Do.
Do.[3]	do.	73	4,000,000.00	50,000.00	1¼	Do.

[1] $628 of dividend No. 49 and $63,506 of dividend No. 50, representing amounts due H. S. Ives & Co., was transferred in March, 1890, to credit of surplus earnings.
[2] Nine months' period ended Dec. 31, 1890.
[3] Six months' period ended June 30, 1895.

Appendix 10.

Memoranda for Agreements Between the Local Parties, the Bankers, the Voting Trustees, the Northern Company, the Southern Company and the Local Company.

1. Proper and lawful agreements between the necessary parties shall be entered into simultaneously so that the following matters shall be lawfully agreed to.

2. The Southern Company shall purchase one hundred thousand (100,000) shares of the stock of the Northern Company and all of the agreements with reference to the relation between the Northern and Southern Companies specified in a memoranda hereto attached and marked "Exhibit A." and made a part hereof, shall be fully arranged for and carried out.

3. In consideration of the several things hereinafter referred to, to be done and performed by the bankers, the voting trustees, the Northern Company and the Southern Company, the local parties will agree to purchase twelve thousand (12,000) shares of the underwriting of the Southern Company upon the same basis and terms as the other underwriters.

4. The bankers will purchase either the three million five hundred thousand (3,500,000) four and a half per cent (4½%) bonds of the local company at par and interest, or the equivalent of said bonds of new four million (4,000,000) four per cent (4%) issue. If said issue is made at four per cent (4%) the difference in value of the bonds between the four and a half per cent (4½%) and the four per cent (4%) estimated at five points shall be borne equally between the local company and the bankers.

Said bonds shall be paid for by the bankers as follows, viz: A cash payment sufficient to meet the cash payment upon the underwriting specified in item three, and the balance on or before ninety days thereafter, with interest at the rate of four or four and a half per cent according to the interest of the bonds.

The bankers shall have the option to determine whether said bonds shall be issued at four or four and a half per cent as above provided, but they shall make their election before the final contract for the purchase of said bonds is executed.

5. The Northern and Southern Companies shall jointly and severally guarantee the principal and interest of either the three million five hundred thousand (3,500,000) four and a half per cent (4½%) bonds or the four million (4,000,000) four per cent (4%) bonds, and also the one hundred and fifty thousand (150,000) bonds of the subsidiary company.

The guaranteeing companies will promptly pay any instalment or instalments of interest or any part thereof from time to time which the local company shall be unable to pay, and for any such interest so paid by them the local company shall issue to the guaranteeing companies, in such proportion as they may require, preferred five per cent cumulative stock of said local company at par; it being understood that the local company shall increase its capital stock by issuing preferred stock for said purpose, but that no preferred stock shall be issued by it for any other purpose without the consent of the guaranteeing companies.

6. The Northern and Southern Companies shall make a joint and several trackage agreement and an agreement for the use of the terminals and stations of the local company in substantial accordance with the talk heretofore had by the representatives of said respective companies.

7. All Southern stock owned, purchased or represented by the parties mentioned in the caption to this memoranda shall be pooled and trusteed. Trustee certificates shall be issued and application to list the same on the New York and Boston Exchanges, shall be promptly made.

8. The local interests shall have representation on the directory in the Southern Company in proportion to the amount of their stock in the pool.

Subject to approval of our respective principals.

(Sgd) L. B. PIERCE
" NEWMAN ERB
" F. H. PRINCE
" THOS. H. TRACY
" JAS. J. ROBISON
" WM. HARDEE

MAY 5, 1904.

EXHIBIT "A."

PERE MARQUETTE.

CINCINNATI, HAMILTON & DAYTON.

1. The Cincinnati, Hamilton and Dayton and the Pere Marquette Railroad Companies are to enter into a contract, so far as they lawfully can, for reciprocal preferential interchange of traffic, and in consideration of the advantages to accrue to the Pere Marquette therefrom, the latter will agree by said contract to pay and deliver to the Cincinnati, Hamilton and Dayton ten thousand shares of Pere Marquette preferred, (or possibly common), stock, now controlled through Trustees holding the same for it. The contract to be for not less than fifty and may be for ninety-nine years.

2. The holders of sixty-five thousand shares of common stock and ten thousand shares of preferred stock of the Cincinnati, Hamilton and Dayton, together constituting a majority of its issued votable capital stock, are to contract to sell the same, at $110 per share for the preferred and $125 per share for the common, to a syndicate, the managers of which will be named in the contract: The first payment, $2,125,000 therefor, to be made at a fixed date, $2,500,000 on or before four months, $2,306,250 on or before eight months, and the balance on or before twelve months thereafter.

With the first payment all said stock is to be deposited with the United States Mortgage and Trust Company of New York, and upon payment of the second installment, forty per centum (40%) of the deposited stock is to be released and delivered to the Syndicate Managers, or to their order.

With said payment, (the second), the management and control of the Cincinnati, Hamilton and Dayton will be surrendered. a majority of the Directors resign and new directors nominated by the syndicate managers elected in their place.

The Cincinnati, Hamilton and Dayton has already authorized a mortgage upon all of its property for the purpose of securing an issue of $25,000,000 par value of Fifty year Four per cent bonds, of which approximately $15,000,000 are to be used to retire previous issues, some of which mature (approximately $2,500,000) during 1905. Under this mortgage $10,000,000 bonds will be available for other corporate purposes.

Appropriate corporate action shall be taken at once by the Cincinnati, Hamilton and Dayton R. R. Co., and the necessary contracts executed on behalf of that company, the same to be delivered to the United States Mortgage & Trust Co., to be held by said Trust Company until said second payment is made and upon said second payment being made the same shall be delivered to the other parties to said contracts.

3. A contract is to be made by the Cincinnati, Hamilton and Dayton with Bankers, by which the latter will agree to acquire and deliver to the Cincinnati, Hamilton and Dayton a total of not less than one hundred thousand shares of the common stock of the Pere Marquette Railroad Company; in consideration for which (or in that proportion for any greater number of shares but not exceeding a majority of the issued shares) bankers are to be paid:

$2,500,000 cash.

750,000 in C. H. & D. 2½ years 4½% Notes secured by 10,000 shares Pere Marquette preferred stock.

7,500,000 out of the $25,000,000 4% mortgage bonds, and 50,000 shares of Cincinnati, Hamilton and Dayton common stock or other obligations as hereinafter mentioned.

The Cincinnati, Hamilton and Dayton is to increase its capital stock to the extent required for this payment. If, for any reason, said increase in the capital stock shall be delayed, the Cincinnati, Hamilton & Dayton will, if so requested by Bankers, or their assigns, in lieu of stock, deliver its obligations in a form to be prescribed by the syndicate managers, to the amount of $5,000,000; but it is understood that any such obligations shall be redeemable at any time in Cincinnati, Hamilton & Dayton increased common stock upon a basis of par and said obligations shall draw no interest except upon a basis of dividends paid on such common stock.

4. Bankers will deliver their agreement, and the agreement of holders of at least 100,000 shares of the Pere Marquette common stock, but not exceeding a control, with whom Bankers will contract, and deposit the agreements with the United States Mortgage and Trust Company, and upon delivery of such Pere Marquette stock said stock-holders shall receive therefor securities as follows:

75% or $75 per share, in said 4% C. H. & D. bonds, and $50 per share in C. H. & D, common stock,

or the equivalent of the latter in other C. H. & D. obligations, in the event of inability to deliver said stock within a reasonable time, but any obligations so given shall be redeemable at any time in the increased Cincinnati, Hamilton and Dayton common stock on above basis.

5. All said agreements will be deposited with the United States Mortgage & Trust Company in trust, under an agreement that the stock deposited will be voted in favor of any resolutions at special or annual meetings, so far as the same may be necessary to carry out the objects contemplated, and that the Board of Directors of the respective Railroad Companies may, without objection, vote for and carry out the various matters referred to.

6. Upon the deposit of the Pere Marquette stockholders' agreement as aforesaid with the Trust Company, the resignations of the existing directors, so far as they may be called for by the syndicate managers, shall be lodged with the Trust Company, and new directors nominated by the syndicate managers elected in their place.

7. All of the acquired Pere Marquette stock, viz: the 100,000 shares referred to, and the other stock of the Pere Marquette, acquired by the Cincinnati, Hamilton and Dayton, not needed to carry out this plan shall be pledged as additional security for the payment of the $25,000,000 bonds referred to.

8. All of the Cincinnati, Hamilton and Dayton stock acquired in payment for the Pere Marquette stock is to be deposited under a Voting Trust Agreement, for a term of not less than five years, with suitable provision for an extension of the time, on the request of one-half, or thereabouts, of the holders in amount of the Certificates of Beneficial Interest, which may be issued therefor.

9. The United States Mortgage and Trust Company is to lend Syndicate Managers, for a period of fifteen months, at five per centum per annum interest, $2,500,000 with the 40% released C. H. & D. stock as collateral, to enable syndicate managers to anticipate the second installment of the purchase price of the Cincinnati, Hamilton and Dayton stock, so there will be no further payment required from the syndicate subscribers until eight months after the first payment has been made.

10. The syndicate managers to be authorized to sell the preferred stock at not less than par for the purpose of anticipating any installments of purchase money.

11. Bankers are to agree with the syndicate managers in consideration of the subscriptions made to furnish the money to acquire the Cincinnati, Hamilton and Dayton stock to pay to subscribers the entire purchase price to be paid Bankers for the Pere Marquette stock, and the syndicate managers will make settlement for the Pere Marquette stock and apply any surplus in reduction of the payments to be made by the syndicate for the Cincinnati, Hamilton and Dayton stock, or the amount borrowed from the United States Mortgage and Trust Company.

12. The increased commission of $2,500,000 and the proceeds of the $1,000,000 preferred stock shall inure to the benefit of the under-writers of the C. H. & D. stock.

APPENDIX 11.—*Participants in loan of $2,500,000 to syndicate managers of C., H. & D. common-stock syndicate and renewal thereof.*

Name.	Address.	Amount of participation in loan of July 7, 1904.	Amount of participation in renewal loan of July 6, 1905.
Kinnicutt & Potter	New York City	$100,000	$100,000
W. Bayard Cutting	do	100,000	.....
R. Fulton Cutting	do	100,000	.....
National Commercial Bank	Albany, N. Y	50,000	50,000
Union Trust Company of Albany	do	25,000	25,000
Guardian Savings & Trust Company	Cleveland, Ohio	50,000	50,000
Morristown Trust Company	Morristown, N. J	100,000	100,000
Rudolph H. Kissel	New York City	50,000	20,000
Geo. J. Little	do	50,000	10,000
Security Trust Company of Troy	Troy, N. Y	25,000	25,000
Windsor Trust Company	New York City	100,000	100,000
Savings Association	do	20,000	.....
American Exchange National Bank	do	100,000	.....
Bank of Commerce of North America	Cleveland, Ohio	50,000	50,000
Commercial Trust Company of New Jersey	Jersey City, N. J	200,000	200,000
F. R. Moeller	New York City	10,000	10,000
National Bank of Commerce in New York	do	250,000	250,000
Orange National Bank	Orange, N. J	50,000	50,000
The Coal & Iron National Bank	New York City	50,000	50,000
Syracuse Trust Company	Syracuse, N. Y	25,000	25,000
The Mechanics Trust Company	Bayonne, N. J	15,000	15,000
Manhattan Trust Company	New York City	50,000	50,000
Henderson & Company	do	100,000	.....
The Corn Exchange Bank	do	100,000	100,000
Kings County Trust Company	Brooklyn, N. Y	50,000	.....
Colonial Trust Company	New York City	250,000	250,000
Brown Bros. & Company	do	100,000	100,000
Aurelius B. Hall	do	10,000	10,000
United States Mortgage & Trust Company	do	210,000	190,000
James A. Webb	do	10,000	10,000
Norfolk Bank for Savings and Trusts	Norfolk, Va	50,000	50,000
St. Paul National Bank	St. Paul, Minn	50,000	25,000
United States Mortgage & Trust Company—Savings Association.	New York City	.....	20,000
City Trust Company	Boston, Mass	.....	100,000
Traders National Bank	Rochester, N. Y	.....	50,000
Siegel, Cooper & Company	New York City	.....	10,000
Nassau Trust Company	Brooklyn, N. Y	.....	30,000
Williamsburgh Trust Company	do	.....	25,000
First National Bank	do	.....	25,000
Jenkins Trust Company	do	.....	25,000
Genesee Valley Trust Company	Rochester, N. Y	.....	50,000
Mercantile Trust Company	St. Louis, Mo	.....	200,000
Cleveland Trust Company	Cleveland, Ohio	.....	50,000
Total		2,500,000	2,500,000

APPENDIX 12.

THE TOLEDO RAILWAY & TERMINAL COMPANY.

The facts disclosed by this record as to the affairs of the Toledo Railway & Terminal Company, hereinafter called the "terminal company," are of such importance, viewed from the standpoint of public interest in railroad financing, as would justify the inclusion of a complete recital in the body of this report. Such a course, however, would too seriously interrupt the connected presentation of the financial histories of the C., H. D. and Pere Marquette, with which this investigation is chiefly concerned, and would also result in the inclusion of matters foreign to the histories of those two roads. The plan has been adopted, therefore, of telling the story of the terminal company in this appendix and including in the body of the report only such matters as relate more directly to the affairs of the two principals.

The terminal company was an Ohio corporation formed in September, 1900, to build an outer belt railway some 38 miles in length, with both passenger and freight terminals, at Toledo, Ohio. The incorporators were: Thomas H. Tracy, Charles F. Chapman, jr., William B. Duck, Frank W. Caughling, and James A. Murphy. The first board of directors of the company consisted of the four first named and Harry E. King, all members or employees of the law firm of King & Tracy, of Toledo. They were elected on February 12, 1901, and with Chas. Wyatt, John R. Peck, Robert V. Law, and Robert J. Law, elected on February 1, 1902, served thereafter to and including the meeting on October 6, 1904. Throughout that period all action of the board was directed by Thomas H. Tracy, the other directors being mere figureheads. Some were neither notified of nor present at meetings at which they are recorded as having voted. Tracy exercised like control over the meetings of stockholders. The reasons back of this domination by Tracy will appear later.

The capital stock was fixed by the articles of incorporation at 1,000 shares of the par value of $100 each. Ten per cent was subscribed for as follows:

Names.	Shares.	Names.	Shares.
Thomas H. Tracy	1	John R. Peck	19
Harry E. King	1	Robert V. Law	19
Charles F. Chapman, jr	1	Lawrence J. Pugh	19
William B. Duck	1	Robert J. Law	19
Frank W. Caughling	1		
Charles Wyatt	19	Total	100

At meetings on April 17, 1901, the stockholders and board of directors approved a contract with the Toledo Railway & Terminal Construction Company, hereinafter called the "construction company," for acquisition of the property necessary for the proposed railway and terminals and for construction and equipment thereof. The construction company had been formed under the laws of Ohio by a group of business men of Toledo, who held interests in it as follows:

	Per cent.
D. Robison, jr., & Sons Company	19½
Edward Ford	19½
John Cummings	14
Geo. G. Metzger	9½
King & Tracy	4½
Wm. Hardee	14
James J. Robison	9½
James J. Robison, trustee	9½
Total	100

D. Robison, jr., & Sons Company was a private banking firm, composed of D. Robison, jr., and his sons, James J. Robison and Willard F. Robison. The three were also directors of the Ohio Savings Bank & Trust Company, of Toledo, hereinafter called the "Ohio bank," of which the first named was president and James J. Robison was secretary, treasurer, and cashier. The beneficiary of the latter's holdings as trustee was not disclosed of record, but it was established that these holdings did not represent beneficial interests for any other than those otherwise interested in their own names.

Edward Ford was president of the Edward Ford Plate Glass Company and vice president and director of the Ohio bank. John Cummings was a local capitalist, later chairman of the board of the Ohio bank. George G. Metzger, of the Metzger Linseed Oil Company, was also a capitalist, with large real estate interests. King & Tracy was the law firm which organized the terminal company. William Hardee was an officer of the National Supply Company.

On September 6, 1901, the directors of the terminal company authorized the issuance of 900 shares of its stock to the nominee of the construction company, William Wertz, as payment of $90,000 for work said to have been performed by that company under the construction contract. At the same meeting president King reported that the 100 shares of stock previously issued had not been paid for, and that the holders thereof had assigned their interests therein to the construction company, on condition that the latter should pay what was due on the stock by crediting the terminal company on sums owing under the construction contract. It was thereupon voted to issue to the same nominee the 95 shares standing in the names of Charles Wyatt, John R. Peck, Robert V. Law, Lawrence J. Pugh, and Robert J. Law, and to let the other 5 shares remain in the names of the directors, they having repurchased the same from the construction company. Those repurchases were made for a nominal consideration only, and simply to qualify the holders as directors.

The absolute control of the terminal company is thus seen to have rested with the construction company from the outset, and this condition existed up to April, 1905, when by a roundabout route the terminal company stock was sold to the Pere Marquette.

At a meeting on September 6, 1901, its stockholders voted to increase the capital stock to $2,500,000, and on February 1, 1902, the authorized issue was again increased, this time to $3,500,000.

The record does not show the original plans for financing the construction of this terminal road. Some property had been acquired and construction work was under way when, in November, 1901, negotiations were opened with the Commonwealth Trust Company, of St. Louis, hereinafter called the "Commonwealth Company," for aid in such financing through the underwriting of bonds to be issued by the terminal company. These negotiations were successful and resulted in the execution of a new construction contract, in the increase in capital stock as just stated, in provisions for an issue of bonds, and in the execution of several new agreements which, though bearing different dates, were really contemporaneous. Further facts as to these matters follow.

What may be considered the keystone of the new financing plans was an agreement dated February 21, 1902, herein termed the "purchase agreement," between the terminal company, the construction company, and the Commonwealth Company, whereby the latter agreed to purchase from the construction company $3,000,000 of bonds and $1,100,000 of the stock of the terminal company for the sum of $2,700,000. This document reaffirmed a provision of the new construction contract between the terminal company and the construction company that the total issues of stocks and bonds of the terminal company

should be limited to $3,500,000 each; also that $500,000 of each class should be held in the treasury, the reserved bonds being issuable only for betterments and extensions of the railway, terminals, and equipment, and the reserved stock being issuable only for its "full reasonable value." The Commonwealth Company was given an option at 92½ on any of the $500,000 of the reserved bonds which might be issued during the continuance in force of a certain "pooling agreement," to be later described, and the terminal company agreed that after the termination of the option it would not sell any of said $500,000 of bonds without first giving the Commonwealth Company the refusal thereof. The latter was to be the trustee under the mortgage securing the bonds, and as soon as issued the $3,000,000 of bonds and $3,000,000 of stock were to be delivered to it, to be held and disposed of according to this agreement and the contracts between the terminal company and the construction company. The $500,000 of reserved bonds also were to be delivered to the Commonwealth Company for the purposes of this agreement. The Commonwealth Company was to hold all the stock under the terms of the "pooling agreement" for 18 months from the date of the acceptance of the completed railway by the terminal company, and for an additional period of one year in case the earnings during the last 6 months of the 18 months should not be sufficient to pay operating expenses and the interest on the $3,000,000 of bonds. During the continuance of the stock pool the Commonwealth Company was to exercise one-third of the voting rights in the terminal company and to elect one-third of its directors, the construction company's interest being two-thirds. The construction company agreed to pay the Commonwealth Company $25,000 for all its services and expenses as trustee; to allow $100,000 to remain invested in the property until the delivery and acceptance of the road; to bear any loss in case the cost of construction exceeded $2,700,000; to give a bond or collateral in the sum of $300,000 for performance of the construction contract and other obligations; to guarantee the completion of the road by September 1, 1903; to pay all interest earned on said bonds up to date of delivery and acceptance of road, such interest to be paid quarterly to the Commonwealth Company on all sums paid by the latter on account of the purchase price of the bonds; and to make up the deficiency if earnings failed to pay the interest on the bonds during the first year following said date of delivery and acceptance. This agreement was authorized by the stockholders and board of the terminal company on February 20, 1902.

To provide for raising the $2,700,000 of cash which would be required under the purchase agreement just described, an underwriting syndicate was formed in St. Louis, under an agreement dated January 16, 1902, whereby the Commonwealth Company on behalf of the subscribers was to enter into the said purchase agreement, each subscriber agreeing to pay at 90 for the bonds subscribed for by him. The subscribers were to receive with each bond $300 of stock, which was to be held by the Commonwealth Company under the "pooling agreement," together with the $1,900,000 of stock belonging to the construction company. Interest on the bonds was to begin from the several dates at which the Commonwealth Company should pay the purchase price therefor to the construction company, such purchase price being payable only as the work of construction progressed and upon the certification of the Commonwealth Company's engineer. The latter company was given an option to purchase each subscriber's bonds at 92½ at any time within 12 months from the date of the completion and acceptance of the road, and each subscriber was required and entitled to sell his pro rata share in case only part of said 3,000 bonds were thus purchased.

This St. Louis underwriting agreement was signed and subscribed to as follows; the names starred are of those who at the time were officials or directors of the Commonwealth Trust Company:

Name.	Amount of bonds.	Amount of stock.	Purchase price.
*Chas. H. Turner	$50,000	$15,000	$45,000
*Lawrence B. Pierce	100,000	30,000	90,000
*L. B. Tebbetts	100,000	30,000	90,000
*Elias Michael	50,000	15,000	45,000
*A. D. Brown	100,000	30,000	90,000
*Edward F. Goltra	100,000	30,000	90,000
*Reid Northrop	100,000	30,000	90,000
*Henry Nicolaus	100,000	30,000	90,000
*Otto F. Stifel	100,000	30,000	90,000
T. W. Carter	100,000	30,000	90,000
James T. Drummond	100,000	30,000	90,000
*Sam'l C. Davis	100,000	30,000	90,000
S. W. Fordyce	100,000	30,000	90,000
R. M. Scruggs	100,000	30,000	90,000
*C. G. Knox	100,000	30,000	90,000
*S. M. Dodd	100,000	30,000	90,000
*C. G. Warner	100,000	30,000	90,000
Wm. D. Orthwein	100,000	30,000	90,000
John E. Pilcher	100,000	30,000	90,000
*Russell Harding[1]	100,000	30,000	90,000
Altheimer & Rawlings Investment Co. (by Ben Altheimer, pres.)	100,000	30,000	90,000
F. E. Marshall	50,000	15,000	45,000
Francis, Bro. & Co	150,000	45,000	135,000
William E. Morgan	34,000	10,000	30,000
Harvey L. Christie	33,000	10,000	30,000
P. Taylor Bryan	33,000	10,000	30,000
Wm. F. Nolker	50,000	15,000	45,000
Philip Stock	50,000	15,000	45,000
Chas. A. Stix	25,000	7,500	22,500
Wm. Stix	25,000	7,500	22,500
Jesse D. Dana	100,000	30,000	90,000
Total	2,550,000	765,000	2,295,000

[1] Became a director Apr. 10, 1902.

Later the subscription of Henry Nicolaus was reduced by half, thus making the St. Louis underwriters responsible for an aggregate of $2,500,000 in par of bonds, for which $2,250,000 in cash was to be paid. To provide for the remaining $500,000 of bonds, the Commonwealth Company, through an agreement with the construction company dated February 20, 1902, arranged for the sale to the latter of $500,000 of bonds and $150,000 of stock for the sum of $450,000. It was agreed that said sum should be paid in installments representing one-sixth of amounts becoming due to the construction company from time to time for bonds sold by it to the Commonwealth Company under the purchase agreement. This $150,000 of stock was to be included in the pool and the Commonwealth Company was given an option for 12 months from the delivery and acceptance of the road on all of the $500,000 of bonds at 92½. As and when paid for the stock and bonds were to be delivered to the Ohio bank as trustee, to be held by it as the property of the construction company, but subject, respectively, to the pooling agreement and to the option of purchase given the Commonwealth Company, as just stated.

The agreement just described did not express completely the transaction covering this repurchase of stock and bonds by the construction company. By letter dated February 21, 1902, Lawrence B. Pierce, vice president of the Commonwealth Company, gave to James J. Robison, holder of a large interest in the construction company, a confirmation of a verbal agreement to the effect that, in consideration of this Toledo underwriting of one-sixth of the

$3,000,000 of bonds, Robison, or anyone whom he might designate, was to receive $41,666.67 par value out of the St. Louis underwriters' $1,100,000 of stock, in addition to the usual bonus of $300 of stock with each $1,000 bond subscribed for by the Toledo people, and was also to receive the profits on the $500,000 of bonds over and above 92½, less brokerage, should the Commonwealth Company exercise its option to repurchase such bonds.

So far as the terminal company's stock was concerned, the effect of the several agreements, therefore, was that the $3,000,000 issuable under the construction contract was divided $2,091,667 to the construction company and $908,333 to the St. Louis interests, the latter amount representing the $1,100,000 acquired with the bonds under the purchase agreement, reduced by $150,000 and $41,667 allowed the construction company under the repurchase arrangements as just described. The stock which was not allotted to the individual St. Louis underwriters was retained by the Commonwealth Company itself. The record before us leaves no doubt that the $3,000,000 of stock was issued purely as a bonus. In view of the subsequent sale of that stock as related herein, the fact that it was issued as a bonus to the bonds is of great importance.

With the exception of Altheimer & Rawlings Investment Company, which put up 100 per cent cash as called, none of the subscribers to the St. Louis underwriting paid in a single dollar of cash on account of their subscriptions. Instead they gave notes for amounts equal to their respective subscriptions, which notes fell due September 1, 1904, and provided for 5 per cent interest on amounts advanced by the Commonwealth Company on account thereof. These notes were secured by pledges of the bonds and stock subscribed for and by additional collateral of the value of $15,000 for each $100,000 of such bonds. The underwriters were not called upon to pay interest on these notes, that having been otherwise provided for by the requirement that the construction company should pay interest during construction.

The St. Louis underwriting agreement was supplemented by one not dated, in 1903, whereby the contracts made by the Commonwealth Company for the purchase of the stock and bonds from the construction company and all acts of the Commonwealth Company done or to be done in connection with the same were ratified and confirmed, and it was constituted the agent of the underwriters for all the purposes of said contracts or modifications thereof. This later agreement was not executed by the following underwriters: L. B. Tebbetts, T. W. Carter, and Francis, Bro. & Co.

We now come to another feature of the new financing plans; that is, the "pooling agreement," already referred to several times. This agreement was entered into between the holders of the stock of the terminal company and Willard F. Robison, Edward Ford, and Chas. H. Turner, voting trustees. Successors to the first two were to be selected by the Ohio bank and to the third by the Commonwealth Company. The agreement was to terminate and the stock was to be redelivered to the holders 18 months after delivery to and acceptance by the terminal company of its railway, if the interest on the latter's bonds was earned during the last 6 of said 18 months, but if the interest was not so earned the agreement was not to terminate until 30 months after delivery and acceptance of the road. Until such termination the stock was to be deposited with the Commonwealth Company and held by it for the purposes of this trust, each certificate bearing a notation that stock evidenced by it was subject thereto. The voting power of the deposited stock was vested in the voting trustees, one-third to each.

The pooling agreement was executed in duplicate originals. One dated March 15, 1902, was signed by—

Henry Nicolaus.
Philip Stock.
Chas. A. Stix.
Francis, Bro. & Co.
Altheimer & Rawlings Inv. Co.
(By Herm. C. Stifel, Treasurer.)
Russell Harding.
William Stix.
Wm. V. Delahunt
Otto F. Stifel.
L. B. Tebbetts.
Saml. C. Davis.
P. Taylor Bryan.
T. W. Carter.
James T. Drummond.
John E. Pilcher.
F. E. Marshall.
Reid Northrop.
C. G. Warner.
C. G. Knox.
S. M. Dodd.
William E. Morgan.
Harvey L. Christie.
Lawrence B. Pierce.
A. D. Brown.
W. F. Nolker.
R. M. Scruggs.
Chas. H. Turner.
W. D. Orthwein.
S. W. Fordyce.
Elias Michael.
Jesse D. Dana.
(By Edward F. Goltra, attorney.)
Edward F. Goltra.

The other duplicate original dated July 5, 1902, was signed as follows:

Thos. H. Tracy	One share
Harry E. King	One share
Charles F. Chapman, Jr.	One share
Wm. B. Duck	One share
Frank W. Caughling	One share
Charles Wyatt	One share
John R. Peck	One share
Robert V. Law	One share
Robert J. Law	One share
John A. Archer	Twenty thousand four hundred ninety one (20,491) shares.

From facts referred to later on, it is undoubtedly true that Archer's execution of this agreement was not for himself, but was on behalf of the Toledo syndicate. In this way the membership of that syndicate was kept secret. It is also of interest to remark that the agreement was apparently executed by only one of the voting trustees, Charles H. Turner. Some time prior to November 12, 1902, Edward Ford was succeeded by James J. Robison as voting trustee.

As previously stated, the new financing plans required the execution of a new construction contract between the terminal company and the construction company, thereby canceling the original contract of April 17, 1901. The new contract was dated February 1, 1902, and was approved by the board and stockholders of the terminal company on that date. Under its terms the latter company agreed to give the construction company $3,000,000 in par of its capital stock and $3,000,000 of its first mortgage 4½ per cent 40-year bonds in full payment for the completed railway and terminal, yards, depot, etc., and four locomotives, it being understood that the total capital stock and total bond issues of the terminal company were to be limited to $3,500,000 each; also, that the remaining $500,000 of each class of obligation was not to be "issued or used except for the purpose of additional extensions, equipment, or improvements" not provided for by the construction contract. Payments under the construction contract in stocks and bonds of the terminal company were to be made upon the certification of two engineers, one selected by each company, as to work done. The securities were to be issued from time to time in the proportion which the then completed work and property acquired should bear to the total amount of work to be done, property to be acquired, and material to be furnished.

Under this new construction contract, and in accordance with the specific votes of the directors and stockholders on February 20, 1902, the terminal company indorsed its guaranty of principal and interest on the entire issue, $150,000, of the bonds of the Toledo Riverside Railway Company, receiving in consideration thereof the transfer and delivery to it of the entire issue, $150,000, of the capital stock of that company. The Riverside Company seems to have been promoted by the Robisons. Its bonds were issued under a mortgage on some 37 acres of lands with a 1,200-foot water front on the east bank of the Maumee River, and a right of way for a spur track connecting said land with the Toledo Belt Line, which property had been held for some time by the Robisons. The construction contract specified that these bonds were to be owned by the construction company. The property was later conveyed to the terminal company by deed dated July 2, 1904, subject to the mortgage underlying the bonds.

On January 23, 1902, the board designated the office of King & Tracy, 501 Nasby building, Toledo, Ohio, as the principal business office of the terminal company in the state of Ohio. At the same meeting and at the request of the construction company, they voted to permit one John A. Archer to subscribe for $2,400,000 par value of the capital stock of their company. That request had been made in view of the large expenditures under the construction contract. This subscription having been formally made, the board voted that, in further pursuance of the request of the construction company, said Archer be credited upon account of his subscription with 10 per cent of the par value thereof, and that said sum should be charged to the account of the construction company at such time as said company should call for an estimate under the construction contract of April 17, 1901, at which time the adjustment between the two companies was to be made. The board then voted that the capital stock of the company be increased to $3,500,000, which increase was ratified by the stockholders on February 1, 1902, as already stated.

On February 5, 1902, the stockholders and the board of the terminal company voted the issuance of $3,500,000 of 4½ per cent 40-year bonds under the company's mortgage, to the Commonwealth Company, as trustee. The Ohio bank was appointed registrar of the company's stock and the form of stock certificate was adopted.

This completes the recital of facts relative to the new financing plans as adopted early in 1902 in consequence of the enlistment of St. Louis capital in the enterprise. The construction work continued for over a year and a half. By resolution of the board on December 3, 1903, the road was declared completed on or before September 1, 1903, and its acceptance was voted as of October 1, 1903. It was then also voted to allow the construction company to remain in temporary possession of and to operate the property which was to be surrendered, however, to the terminal company upon its demand, the construction company meanwhile accounting for the receipts and disbursements incident to such operation. The president was instructed to certify to the Commonwealth Company the completion and acceptance of the property and to request the delivery to the construction company of the balance of the $3,000,000 of bonds and $3,000,000 of stock which the terminal company had agreed to pay for the completed property. The completion of the work was certified to by the engineer of the Commonwealth Company on January 7, 1904, and the final payments by it to the construction company under the contract to purchase the $3,000,000 of bonds and $1,100,000 of bonus stock were made in February, 1904.

In addition to the property furnished under the construction contract, the construction company built several sidetracks and supplied 50 ballast and 50 secondhand gondola cars, to cover which a supplemental agreement dated November 13, 1902, was entered into, by which the construction company was to be allowed cost plus a profit of 10 per cent on such extras. Provision was also made therein for furnishing 6 additional locomotives at cost plus a profit of 5 per cent. Payment was to be made in terminal company's bonds at 90. The terminal company's board approved this contract on November 13, 1902, and contemporaneously authorized vice president Tracy to dispose, at not less than 90, of such of the $500,000 of reserved bonds then in the treasury as would be needed to pay for such tracks and equipment.

At a meeting on December 3, 1903, the board instructed the president to certify to the Commonwealth Company that the construction company was entitled to $186,152.58 net for extra work, material, and equipment under the supplemental contracts and that this amount, together with $9,050.33 for materials delivered to the terminal company, was to be paid from the proceeds of the bonds. The Commonwealth Company's engineer, however, reduced this claim for "extras" to $185,873.99, and on February 25 the trustee allowed the construction company the corresponding number of bonds at 90, viz, $206,000. No separate delivery of bonds to or on account of the construction company because of the materials valued at $9,050.33 is of record, but such action was evidently contemplated, for in a contract of March 15, 1904, later described, the Commonwealth Company agreed to deliver bonds at 90 in payment of claims for extras *and material*, stated to aggregate approximately $195,000. It is evident, therefore, that as late as March 15, 1904, $195,000 represented the aggregate due the construction company for the extras and materials furnished, or, translated into par value of terminal company bonds at 90, about $216,000 of bonds.

The foregoing facts are set forth in greater detail than would ordinarily be necessary, because of the subsequent issuance of bonds to a greater amount than the final allowance for extra work would justify, as will later appear.

There is inserted below a comparative income account for the terminal company compiled from its books:

Toledo Railway & Terminal Company (including receiver).

CONDENSED INCOME ACCOUNT STATEMENT FOR THE PERIOD OCT. 1, 1902, TO OCT. 31, 1907.

	Railway operating revenues.	Railway operating expenses.	Net revenue (or *deficit*) from railway operations.	Railway tax accruals.	Railway operating income (or *deficit*).	Total operating income (or *deficit*).	Nonoperating income.	Gross income.	Deductions from gross income.	Net income (or *deficit*).	Balance transferred to profit and loss.
Period ending June 30, 1904	$69,117.00	$78,436.19	*$9,319.19*	.....	*$9,319.19*	*$9,319.19*	$12,850.23	$3,531.14	$76,726.02	*$73,194.88*	*$73,194.88*
July 1, 1904, to June 30, 1955	157,180.66	303,247.38	*146,066.72*	$5,573.39	*151,645.11*	*151,645.11*	83,760.41	*67,884.70*	160,914.35	*226,799.05*	*226,799.05*
July 1, 1905, to June 30, 1906	214,489.25	230,495.15	*16,005.90*	20,556.72	*36,562.62*	*36,562.62*	90,324.06	53,761.44	160,618.83	*106,857.39*	*106,857.39*
July 1, 1906, to June 30, 1907	220,493.31	248,000.95	*27,507.64*	12,586.94	*40,094.58*	*40,094.58*	85,553.77	16,459.19	163,065.28	*146,606.09*	*146,606.09*
Four months ending Oct. 31, 1907 [1]	83,575.83	92,025.59	*8,449.76*	2,997.82	*11,447.58*	*11,447.58*	45,582.68	34,105.10	53,733.76	*19,628.66*	*19,628.66*
Total	744,856.05	952,205.26	*207,349.21*	41,719.87	*249,069.08*	*249,069.08*	289,041.25	39,972.17	615,058.24	*575,086.07*	*575,086.07*

[1] Includes subsequent adjustments of income.

By the spring of 1904 the terminal road had been in operation for several months, and during that time had failed to earn fixed charges. It must have been apparent to its promoters that it was necessary for them to market their securities at an early date in order to avoid having their prospective profits wiped out by accumulating interest charges. Such attempts as had been made to sell those securities following the completion of the road had been unsuccessful up to that spring. But in connection therewith there were transactions recorded which deserve attention because of their significance in the light of subsequent events.

Thus, by an option dated March 14, 1904, authority was given the construction company by a "committee representing St. Louis underwriters," with the approval of the Commonwealth Company, to sell within 45 days all the stock represented by that committee. If all the $3,000,000 outstanding stock was sold, those interests were to receive not less than $10 per share. If only a majority was sold, they were to receive not less than $15 per share. A condition was that no stock should be sold unless all the issued bonds were sold at not less than par and interest, or else guaranteed, principal and interest, by one or more of the following companies: Pennsylvania Company; Cincinnati, Hamilton & Dayton Railway Company; Lake Shore & Michigan Southern Railway Company; Grank Trunk Railroad Company of Canada; or Michigan Central Railway Company. The construction company agreed by letter of same date to endeavor to obtain the best possible price for the bonds under said option, in no event accepting less than par and interest. The letter stated:

> It is understood that we own approximately $700,000 par value of said bonds, including the $500,000 which we have underwritten, and *about $200,000 which we have received for extras.* (Italics ours.)

If all the issued bonds were sold above par, the construction company was to receive the entire proceeds from its 700 bonds, except $50 per bond to be paid the Commonwealth Company, apparently in consideration for the nonexercise of its option to purchase those bonds at 92½. But if the issued bonds brought only par, the construction company was to receive only $925 and interest for its bonds, the balance of the proceeds of those bonds and all the proceeds of the other bonds going to the Commonwealth Company.

Contemporaneously, on March 15, 1904, the terminal company, the construction company, and the Commonwealth Company entered into an agreement which stated that the completed property had been accepted by the terminal company under date of September 15, 1903, and fixed certain rights of the construction company and the terminal company accordingly. Among other things, it was provided that the construction company should pay interest on all bonds outstanding, except those owned by it, up to September 15, 1904. In the resolution of the terminal company's board approving this agreement on March 17, 1904, this feature was given prominence, the evident intention being thereby to change the acceptance date from October 1, 1903, as previously approved, to September 15, 1903. The significance of this change lies in the fact that the construction company was under contract to pay the unearned interest on the bonds for one year from the date of acceptance of the road.

Again, under this contemporaneous agreement the Commonwealth Company was to deliver to the construction company bonds at 90 in payment for extras and material furnished the railway company, aggregating approximately $195,000. This latter amount, be it noted, evidently represented the aggregate of such items to March 15, agreeing with figures previously given.

The record is entirely clear in showing that early in February, 1904, preceding the execution of the two contracts just described, active negotiations

were had between the Toledo and St. Louis interests as to the terms on which the property should be sold. During their course Tracy proposed that the entire authorized issue of terminal company bonds, $3,500,000, both earned and unearned, be disposed of and that the proceeds from the unearned bonds be divided between the St. Louis and Toledo interests on the basis of their respective holdings of stock. Vice president Lawrence B. Pierce of the Commonwealth Company objected to the issuance of treasury bonds, not in fact earned, in the following language:

> Since the mortgage provides that the treasury bonds can be issued only for extensions and betterments, the trustee may not be authorized to certify these bonds, except in accordance with the terms of the mortgage, even though the stockholders and present bondholders should consent.

This commendable stand was not maintained by the trustee, but was flatly abandoned in the following amazing provision of an agreement dated April 21, 1904, with the construction company, signed for by Tracy, and a "committee representing St. Louis underwriters," signed for by Pierce, the latter also signing for the Commonwealth Company:

> In case the $200,000 of bonds of the Toledo Railway & Terminal Company, now in the treasury of said company, are disposed of, the proceeds therefor, together with any excess received for said $3,300,000 of bonds above par and interest, shall be divided among the stockholders pro rata.

It should also be noted that in this remarkable document the construction company's compensation for "extras" is for the first time fixed at $300,000. It refers to that company's interest as—

> bonds owned by them, approximating $800,000 par value, the same being the $500,000 originally underwritten by them, and the bonds heretofore received and hereafter to be received by them for extras.

With $300,000 of bonds claimed for "extras," there remained $200,000 out of the $500,000 reserved by the underlying agreements for additions and betterments only. No claims against these $200,000 of bonds for such additions and betterments had then been made or were ever afterwards made. They were treasury bonds, the issuance of which had been restricted by the provisions of before-described agreements. The terminal company, with whose treasury bonds it was thus proposed to take such liberties, was not a party to the agreement, but its complete control in proportions hereinbefore stated then lay in the hands of those who were. The St. Louis and Toledo syndicates, of course, would reap the direct benefit from the contemplated sale of the treasury bonds. The document did not specify the capacity in which the Commonwealth Company signed, but it was the trustee under the mortgage securing the bonds, and could not in any capacity participate in such an act and remain faithful to its trust. It is true that when the $200,000 of bonds were sold some months later the proceeds were not distributed among the stockholders, as had been proposed, but were used for the other purposes hereinafter indicated. That does not cure the breach of trust made in signing the agreement.

This agreement of April 21, 1904, was good until May 5 and modified the previously described option agreement of March 14, 1904. By its terms the construction company was allowed to pay a commission of $10,000 if the terminal company stock should be sold at $10 per share, and provided that the Commonwealth Company should receive par and interest on its $2,500,000 of terminal company bonds and that the construction company should receive a like price on the $800,000 of bonds described as "owned by them," in the

section of the agreement just quoted. With reference to that provision for allowing the construction company $300,000 of bonds for "extras" it may be recalled that the Commonwealth Company on February 25 had allowed $206,000 of bonds for $185,873.99 of such expeditures which were certified to by its engineer. Its records contain no evidence of any further expenditures of that character. Even allowing for the $9,050.33 additional for materials and supplies, the outside amount in bonds due the construction company would not have exceeded $216,000 par value. Contrary to previous and subsequent practice in recording minutes of the terminal company's directors' meetings, the particular minute authorizing the delivery of these $300,000 bonds contains no statement whatever of the amounts of the claims allowed to justify such issue. Further, it is found that 13 days before this corporate action the terminal company had executed options for the sale of the full $3,300,000 of its bonds, including the $300,000 under consideration.

The efforts of the Toledo and St. Louis interests to sell out their terminal company holdings were unsuccessful until a deal was made with the promoters of the C., H. & D.-Pere Marquette combination. They succeeded then only by becoming involved in a new venture, for the promised sale of their bonds was gained only after they had agreed to subscribe in substantial amounts—ultimately one-fifth of the aggregate—to the C., H. & D. common-stock syndicate.

The various features of this new undertaking were expressed in a memorandum agreement made with the promoters of the syndicate, and dated May 5, 1904, printed herein as Appendix 10. In consideration of the Toledo and St. Louis subscriptions, this agreement provided, (*a*) that purchasers for the terminal company bonds would be furnished who would buy at par and interest, payments therefor to be made in such a manner as to meet the cash payments falling due on the C., H. & D. syndicate subscriptions, and the balance within 90 days; (*b*) that the terminal company and Toledo Riverside bonds would be jointly and severally guaranteed as to principal and interest by the Pere Marquette and C., H. & D., which companies would pay unearned interest on the bonds, receiving for such payments the 5 per cent cumulative preferred stock of the terminal company; (*c*) that the two guaranteeing roads would enter into an agreement for the use of the terminal company's tracks, terminals, and facilities; and (*d*) that the St. Louis and Toledo interests would have representation on the board of the C., H. & D. proportionate to their subscriptions. Strict adherence to this contract is evidenced by the record of subsequent events.

The promised sale of these bonds at par and interest was guaranteed by F. H. Prince & Company and Newman Erb, who seemed to be the prime movers in the C., H. & D. syndicate, and under an agreement of June 10, 1904, they also guaranteed personally to pay the difference between that price and the sale price named in two contracts for the sale of such bonds entered into by the terminal company on the same date. One of these was with Rudolph Kleybolte & Company for $2,000,000 of terminal company bonds at 97 and interest, with an option on $500,000 more on the same terms. The other contract was in two parts (1) with the construction company for $150,000 Toledo Riverside Railway Company bonds and $200,000 terminal company bonds, and (2) with F. H. Prince & Company for $1,300,000 terminal company bonds, $500,000 of which were subject to Kleybolte's option. Under this latter contract the bonds were to be bought at 97½ and interest. These contracts were ratified by the St. Louis underwriters in an agreement dated June 14, 1904, by which they contemporaneously confirmed the execution of the C., H. & D. syndi-

cate subscriptions made on their behalf for 6,500 shares, and also agreed that the Commonwealth Company would be entitled to all proceeds from the sales of bonds in excess of 92½.

The agreements between the owners of the terminal company bonds looking to the sale thereof evidently either expired or were not put into effect, for the ultimate sale was arranged under a new agreement between the Commonwealth Company, the construction company, and the terminal company. This bore date May 20, 1904, but was not executed until about June 23, 1904, and evidently resulted from the final outcome of the arrangements with respect to the C., H. & D. syndicate. This agreement recited that the $3,500,000 of bonds were owned by said three parties in the sums of $2,500,000, $800,000, and $200,000, respectively, and then provided (1) that necessary corporate action should be taken by the terminal company to confirm the titles thereto in the amounts stated, and (2) that the entire $3,500,000 of bonds were to be sold by the terminal company at par and interest upon terms satisfactory to the other two parties. The proceeds from the sale of $3,300,000 were to be applied first to the payment of the subscriptions of the Commonwealth Company and the terminal company aggregating 13,000 shares of C., H. & D. stock, such subscription payments to be charged against the bond holdings of the trust company and the construction company, one-half each. The latter was to be released from its guaranty of the payment of the interest on the bonds. The proceeds of the terminal company's $200,000 of bonds were to be held in trust for its benefit by the Commonwealth Company. This change of viewpoint as to the $200,000 followed upon the negotiations between the Toledo-St. Louis interests with the other promoters.

The provision of the foregoing agreement requiring the terminal company to confirm the ownership of bonds by formal corporate action is very significant in view of the fact that contracts for the sale of all the bonds had been entered into some 18 days before, and in view of the further fact that the terminal company had not yet authorized the issuance of the full $300,000 of bonds for "extras," etc. Also significant is the following excerpt from a letter of June 23, 1904, to Thomas H. Tracy from Lawrence B. Pierce, who had executed the agreement on behalf of the Commonwealth Company:

> With reference to the bonds owned by the parties named therein, I have signed this agreement conditional upon your making the proper requisition for the balance of the bonds due the construction company to bring the total amount up to $800,000 * * *.

The required corporate action in this connection was taken by the stockholders of the terminal company on June 23, 1904, following the formal authorization of the agreement of May 20 by the board on the same day. There had been presented to the board at its meeting a communication from the construction company reciting that the latter had certain bills against the terminal company long overdue and unpaid, some of which had been allowed and others not allowed. The communication did not detail what the bills were for or even the amounts thereof, but simply stated that the construction company would accept $300,000 of bonds and $500,000 of stock in full settlement of any and all claims to date. In a preamble to the resolution then adopted authorizing the issuance and delivery of the securities in those amounts it is recited that the construction company had previously furnished material and equipment and performed work not specified in the original construction contract, but here again, contrary to the previous and subsequent practice of the company, the aggregate cost thereof was significantly omitted. The fact is that the directors and stockholders had no real knowledge of what they did, their votes

being cast, as always, at Tracy's direction and with his assurance that it was the thing to do.

The wording of these minutes was calculated to support the theory that the $500,000 of terminal company stock was given as part payment of the aforesaid claims. Such was not the fact. Going back for a moment, it should be noted that one of the provisions of the June 10, 1904, bond sale contract with Rudolph Kleybolte & Company required that the corporate action and form of mortgage respecting the bonds should be satisfactory to Storey, Thorndike, Palmer & Thayer, a Boston law firm, understood to represent Prince & Company. Referring to one of the members of that firm, Tracy wired Pierce on June 21 as follows:

Palmer wires thinks necessary to issue entire amount of stock to cover question I discussed with you. I therefore think better issue five hundred thousand stock on account final construction company contracts holding same in name of trustees for benefit of railway company. Please wire consent.

Pierce's answer on the following day was:

We consent to issue of treasury stock in name of trustees for benefit of railway company.

Furthermore, a letter, dated June 23, from Tracy to Palmer shows that the only reason for the issuance of the last block of $500,000 of stock was to make the issue of stock at least equal to the issue of bonds and thereby satisfy all possible doubt as to the legality of the latter under the Ohio statutes.

The most important feature of this stock transaction is the fact that, contrary to Tracy's proposal and Pierce's consent that the stock be issued for the benefit of the terminal company, it was issued to the construction company, being placed at the latter's request in the name of Robert J. Law as trustee. As a witness in this proceeding Law testified that he knew nothing of the trust under which he acted, that the stock was simply issued in his name for convenience, and that he at once indorsed the certificates in blank and delivered them to Tracy. The final disposition of this block of $500,000 of stock is relater further on, and in view of that disposition this change of beneficiary from the terminal company to the construction company is highly significant.

In addition to the formal contracts for the sale of their bonds and the guaranty thereof by Prince and Erb, the Toledo-St. Louis interests provided further safeguards for their large subscriptions to the C., H. & D. syndicate. First, by letter of May 19, 1904, they delivered the executed subscription agreements only under condition that payments thereon would not be made until the $3,500,000 of terminal company bonds and $150,000 of Toledo Riverside Railway Company bonds were sold at par and accrued interest and upon terms of delivery and payment satisfactory to them. Then, upon the delivery of the bonds to the United States Mortgage & Trust Company for final disposition, they issued instructions that the $3,300,000 to be purchased by Rudolph Kleybolte & Company, that firm having taken over the Prince contract, should not be delivered until paid for at the stated prices, and that eight thirty-thirds of the proceeds should be credited to the terminal company and twenty-five thirty-thirds to the Commonwealth Company. Finally, when they came to forwarding their payments for the first call on their subscriptions, they issued specific directions to their agent that such payments should not be made until the joint guaranty by the C., H. & D. and Pere Marquette had been placed on the Toledo Riverside and terminal company bonds to the satisfaction of Rudolph Kleybolte & Company, and until the latter had made the required initial payment on their purchase. Also, the Commonwealth Company received the joint and several

guaranty of Newman Erb, Jas. J. Robison, F. H. Prince, Thos. H. Tracy, L. B. Pierce, and E. Zimmerman that Rudolph Kleybolte & Company would pay, before July 15, 1904, such an amount on account of the purchase of terminal company bonds as would equal the first call on the Commonwealth Company's subscription, the guarantors agreeing to repay said installment in the event of the failure of Rudolph Kleybolte & Company to make such payment.

As stated in the body of this report, it was necessary that the C., H. & D. syndicate managers should have sufficient funds with which to make the first and second payments under the so-called vendors' agreement of May 28, 1904, in order that the entire syndicate plan should be consummated, for only thereby could they secure the voting rights of a majority of the stock of the C., H. & D., the resignation of a majority of its then board of directors, and the substitution of their own nominees. A few days before the date upon which the first call under the C., H. & D. syndicate became payable it was found that the funds from that call, together with loans from the United States Mortgage & Trust Company, and the proceeds of their sale of 10,000 shares of C., H. & D. preferred stock to Rudolph Kleybolte & Company, would still leave the syndicate managers some $600,000 short of the amount needed.

Failure of the C., H. & D. syndicate plan would have weighed heavily on the Toledo-St. Louis interests. Quite naturally, under the conditions described, they were requested to advance the amount of the shortage, the advance to be received as advance payments of installments on their subscriptions. This request was complied with in order that the new C., H. & D. board of directors could be elected, authorize the guaranty of the terminal company bonds and the execution of trackage contract with that company, and thereby enable the owners of said bonds to consummate their sale thereof, the prospective purchasers requiring guaranteed bonds. These advances brought the amounts to be paid on July 7, 1904, by the Toledo and St. Louis interests up to $552,500 each. The Commonwealth Company made its payment out of its share of the proceeds of the first block of bonds taken by the purchasers, but the terminal company made its payment from a loan from the United States Mortgage & Trust Company for $552,500 secured by $800,000 of its bonds which had been formally assigned back to it by the construction company in consideration of the terminal company subscribing to the syndicate on behalf of the latter. This loan, which, by the way, was never recorded on the books of the terminal company, was repaid from time to time, out of the proceeds of the bonds.

The actual sales and deliveries of the terminal company bonds were not made under the terms of the June 10 sales contracts previously described. During the closing days of the promoters' planning it was decided to have the bonds purchased direct from the three owners by the C., H. & D. and Pere Marquette, obviously to give a semblance of legality to the guaranty of principal and interest which was to be indorsed on those bonds by those roads. This new arrangement dictated the corporate action taken by the reorganized board of the C., H. & D. at its first meeting on July 7, 1904, after the C., H. & D. syndicate had assumed control, as related in detail in the body of this report. See page 102.

In that reorganization of the C., H. & D. board Thomas H. Tracy and James J. Robison became directors. In the voting on the purchase, guaranty, and sale of terminal company bonds and on the contracts for the use of its facilities by the Pere Marquette Tracy asked to be excused from voting. Robison voted in the affirmative. Both held interests in the construction company, a prime beneficiary of these corporate acts. That purchase and sale was never recorded in the books of account of either the C., H. & D. or the Pere Mar-

quette. In order to pass the bonds to the real purchaser resolutions were immediately adopted at this meeting authorizing the sale of the bonds at such prices as the officers should deem best. This resulted in a contract of even date, already prepared, with Rudolph Kleybolte & Company whereby $2,500,000 of the said bonds were sold at 97 and interest and $800,000 at 97½ and interest subject to the indorsement thereon by the sellers of their joint guaranty of principal and interest.

These $3,300,000 bonds were delivered and paid for between July 7 and October 12, 1904. During the same period the Toledo-St. Louis interests also received through Prince & Company $95,000, being the amount necessary to bring the sale price of the bonds to par and interest. This was paid under the Prince-Erb guaranty, *ante*, page 249, which was another of the inducements for the Toledo-St. Louis subscriptions to the C., H. & D. syndicate.

The profits on the $2,500,000 of bonds owned by the St. Louis syndicate were divided according to the contracts, i. e., each subscriber received profits of $25 per bond, except Altheimer & Rawlings Investment Company, the only cash subscriber, which received $100 profit per bond on its subscription for 100 bonds. The balance of profit, $75 per bond on $2,400,000, went to the Commonwealth Company. These subscribers' profits were not disbursed in cash, but were applied in partial payment of advances made on their several notes of June 24, 1904, given in connection with the subscription on their behalf to the C., H. & D. syndicate.

The profits on the $800,000 of bonds owned by the construction company apparently were merged with other funds of that company, no dividend being concurrently declared. As previously stated, the proceeds from its bonds were first applied to the liquidation of its note for $552,500 to the United States Mortgage & Trust Company.

On June 23, 1904, the stockholders of the terminal company ratified and confirmed all acts of the directors and officers which had resulted in the issuance and delivery of $3,500,000 of the company's capital stock, and $3,300,000 of its bonds. These latter had been issued under the mortgage to the Commonwealth Company of February 10, 1902. At meetings on July 2, 1904, the stockholders and board of directors authorized the issuance of $3,500,000 of the company's 4½ per cent 50-year bonds under a new mortgage to the Commonwealth Company, dated July 1, 1904. The new bonds were to replace the old, and, to facilitate the execution of the plan of sale, an interim bond was issued to the United States Mortgage & Trust Company against which it issued participation certificates representing the bonds to be delivered when engraved. The sale of $3,300,000 of bonds to Rudolph Kleybolte & Company left $200,000 in the hands of the Commonwealth Company belonging to the terminal company.

These remaining $200,000 of terminal company bonds were a part, as will be remembered, of the $500,000 reserved under the company's agreements for extensions and improvements only. Notwithstanding, the Commonwealth Company, in breach of its trust duty, permitted their issuance for other purposes to a great extent. In July, 1904, it released a block of $100,000, represented by a participation certificate, with express notice that they were to be used as collateral to a note given by the terminal company to raise funds with which to pay bond interest; a second lot of $100,000 in the same form it surrendered in September, 1904, to be pledged to raise funds to complete the passenger station and for improvements on the terminal company's property.

Only a portion of the proceeds of these bonds was expended for improvements, and information respecting use of the proceeds was not furnished to the Commonwealth Company until May 19, 1905, although the bonds were sold

above par in November and December, 1904. The statement of expenditures accounts for $199,982.64 of the proceeds, "the balance * * * was used in paying small bills and operating expenses." Included in the list are two items aggregating $108,444.80 for the payment of interest on all the outstanding bonds of this issue.

With their bonds disposed of at a substantial profit and the interest thereon provided for by the trackage contract the Toledo and St. Louis syndicates still had remaining $3,000,000 of terminal company stock, which is conclusively shown by the record to have been put out as bonus with the bonds, and not to represent a single dollar invested in the property.

Whether or not a sale of the terminal company stock had been promised by the promoters of the C., H. & D. syndicate in order to obtain the large subscriptions of the Toledo-St. Louis interests is undetermined by this record. It does appear, however, that on April 21, 1904, when the C., H. & D. syndicate operations were under way, though not definitely formulated, the Toledo-St. Louis interests agreed among themselves that the construction company might pay a commission of $10,000 if the stock was sold at $10 per share, and such proportion of any excess above that price as it might deem best. This same figure of $10 per share is mentioned also in correspondence of about that date concerning a certain "agent" who it was said would get that and perhaps more for the stock, and, it seems, went as high as $10.50 before the negotiations ended.

Who the "agent" was, or who the "proposed purchasers" were, does not appear, but it is noteworthy, in the light of subsequent events, that the best price named in April, 1904, was $10.50 per share, and also that the "agent's" commission was contingent upon his obtaining a better price for the stock.

The record shows no further action toward the sale of the stock until February 27, 1905, when Tracy wired Pierce from New York that he had had long negotiations with Eugene Zimmerman and H. B. Hollins & Company. He said:

> They started low and finally offered on behalf of C., H. & D. $1,450,000 upon condition that we subscribe for $500,000 in issue of C., H. & D. three and one-half year 4½ per cent notes secured by deposits of stock of the Toledo Railway & Terminal Company as collateral upon same terms as other underwriters.

These negotiations must be considered in the light of the fact that the control of the C., H. & D. and Pere Marquette had passed several months before from the C., H. & D. syndicate to H. B. Hollins & Company. They were successfully concluded on March 3, 1905, at a meeting in New York between Tracy, Eugene Zimmerman, H. B. Hollins, and the latter's partners, Rafael R. Govin and Bernard J. Burke. The results were embodied in a communication of that date from the construction company signed by Thos. H. Tracy, president, and addressed to Zimmerman as president of the Cincinnati, Hamilton & Dayton Railway Company. By its terms the construction company offered to sell to the C., H. & D., or to H. B. Hollins & Company, all of the Toledo Railway & Terminal Company shares owned by it (number not stated) at the price of $41 net, delivery to be made on the 15th day of April and the price to be paid in cash at that time. This offer was conditioned upon the privilege being given the St. Louis underwriters to put in their stock on the same terms. The communication was indorsed with a statement signed by Zimmerman as president of the C., H. & D., whereby he agreed on behalf of that company to accept the offer provided the stock was not purchased by H. B. Hollins & Company, his acceptance being subject to approval by the board of directors or the executive committee. This latter point was covered by a separate letter of the same date wherein H. B. Hollins & Company stated to Thos. H. Tracy, as president of the

onstruction company, that the former would recommend that the board of directors or executive committee of the C., H. & D. approve the purchase of the erminal company stock according to the proposition as described. In addition racy secured the "positive personal promise," to use his words, of all the other egotiators that the sale would be consummated.

The St. Louis underwriters had, by an agreement dated October 30, 1903, appointed a committee which they had empowered to sell their holdings of tock. This committee sanctioned the sale as arranged by Tracy.

The entire issue of $3,500,000 of terminal company stock was forwarded n April 12 to the National Bank of Commerce, New York City, in two packages, one containing 24,402.778 shares and the other containing 10,597.222 hares, representing the respective amounts stated to be owned by the construction company and the Commonwealth Company. It was paid for in cash on the 15th of April, when the companies were credited with the proceeds at the price of $41 per share, or $1,000,513.89 and $434,486.11, respectively.

In view of the fact that the Toledo-St. Louis interests received $41 per share for the stock, whereas later the C., H. & D. paid $42 per share plus interest therefor, it is quite significant that it was to H. B. Hollins & Company that the stock was delivered on April 15, 1905. This firm was then fiscal agents for both the C., H. & D. and Pere Marquette. The record shows that to raise funds to buy the stock that firm arranged with the North American Trust Company, the Trust Company of America, and the United States Mortgage & Trust Company for loans of $500,000 from each for the Pere Marquette, giving the latter's 60-day 5½ per cent notes therefor, dated April 15, redeemable at an earlier date if desired by the borrower, and secured by the terminal company stock. These notes were never recorded on the books of the Pere Marquette.

Up to this time there had been no corporate action by either road with respect to this purchase, and it was not until April 27, 1905, that the first steps were taken to authorize the same on behalf of those corporations. On that date the executive committee of the C., H. & D., Zimmerman, Cumming, Turnbull, and Wallace, with a representative of counsel, being present, considered a communication from Mr. Russell Harding, vice president of the company and also a member of the St. Louis syndicate, concerning the advisability of its acquisition of the capital stock of the terminal company. This letter bore the date of February 17, 1905, and was addressed to president Zimmerman. The copy spread upon the minutes of the C., H. & D. is not signed. In this letter, after reciting certain conditions relating to the terminal company, vice president Harding announced it as his opinion that it was decidedly to the advantage of both the C., H. & D. and the Pere Marquette to acquire control of that property through stock purchase. The committee thereupon voted its authorization for the purchase of the entire 85,000 shares of stock at the price of $42 per share and at the same meeting directed the president or vice president to transmit to the board of directors of the Pere Marquette a communication offering to sell the said shares to that company at $47 per share payable in cash. In this same communication an offer was made to the Pere Marquette to purchase such amount of its new refunding bonds as it might issue within the following six months, not exceeding $4,000,000, at the price of 90 and accrued interest. The Pere Marquette accepted these offers and ultimately took the stock on June 21, 1905, paying therefor the price of $47, aggregating $1,645,000, in cash. The details of the transaction as between the Pere Marquette and the C., H. & D. appear in the

body of this report. But it should be pointed out how it eventuated with the Pere Marquette. The purchase price to the latter of the terminal company's stock, $1,645,000, was set up on its books in June, 1905, as an investment and carried as such until August, 1908. By resolution of the board of directors at a meeting held August 18, 1908, this amount, together with $70,000, which had also been advanced to the terminal company to meet interest payments, was ordered to be charged to "road, franchises, and equipment" as "worthless accounts." This was the result of the foreclosure of the terminal company's mortgage, the entry being made in the accounts for June, 1908.

In their sale of the terminal company stock the Toledo–St. Louis interests paid a commission of $42,000 to a party whose identity the record does not disclose. The presence of Zimmerman and Hollins at the conference of March 3 at which the sale was consummated would indicate that their "combination" was interested in the transaction; to what extent they profited in the commission is not disclosed of record.

Of this $42,000 commission the St. Louis contingent paid $12,716.66, and this, with $13,478.12 of interest paid for the terminal company and $2,744.06 of miscellaneous expenses, reduced their profits from their 10,597.222 shares to $405,517.27. This latter amount was not disbursed in cash to the St. Louis underwriters but was applied in part repayment of advances made on their individual notes given by them in connection with their joint subscription for 6,500 shares of stock in the C., H. & D. common-stock syndicate. So also the profits of the Toledo interests were not all disbursed at this time. Their gross receipts were $1,000,513.89 from which evidently a dividend of $650,000 was paid, for the record shows that amount disbursed on April 22, 1905, to the parties of interest in the construction company.

It will be remembered that the last block, $500,000, of terminal company stock instead of being issued for the benefit of that company as Tracy had agreed with Pierce should be done, was in fact issued by the dummy directorate at Tracy's behest to the construction company, and placed in the name of a dummy trustee at the latter company's request. That trustee immediately indorsed the certificates in blank and delivered them to Tracy. This stock had been specifically reserved, by the terms of the underlying contracts, for the future betterment of the property and was not issuable except for "full reasonable value." While the minutes of the meeting at which its issuance was authorized are framed to indicate that this stock together with $300,000 of bonds was voted to the construction company in payment for work performed and material and equipment furnished outside the original construction contract, this record shows that such debts were paid in full by the bonds, and that the reason for issuing this stock was to raise the amount of issued stock to the level of the company's bonds, in order to remove doubt as to the legality of the latter under Ohio statutes.

Neither in the terminal company's records, nor in the voluminous record before us, is there anything indicating that for this $500,000 of stock the terminal company received "full reasonable value" or any other value. On the contrary, the evidence in this proceeding abundantly proves that when the sale of the terminal company stock to the C., H & D. was consummated the entire issue of $3,500,000 was delivered and paid for, and that the proceeds of this $500,000 block were divided between the Toledo and St. Louis interests in proportion to their then respective holdings of the $3,000,000 of stock issued as a bonus with the $3,000,000 of bonds under the construction contract. If the construction company had earned that $500,000 of stock it would not voluntarily

have surrendered a one-third interest. The construction company did not earn this stock. It divided the proceeds thereof with its St. Louis partner, whose consent was necessary to its issuance.

Worthy of the severest condemnation also is the manner in which this $3,500,000 of terminal company stock was unloaded originally on the C., H. & D. and then on the Pere Marquette. To fully appreciate this transaction it must be kept in mind, first, that those two roads were in the absolute control of H. B. Hollins & Company; second, that Hollins's immediate interest was in the C., H. & D.; and third, that this stock was worthless. Facts as to the first and second propositions are set out in the body of this report; as to the third, it may be repeated that, as $3,000,000 of the stock had been issued as a bonus and the remaining $500,000 had been misappropriated by those in control, not a cent was paid into the company's treasury or expended on its property as a result of the entire issue. But we may go further, for, far from being a dividend earner, the terminal company had failed even to earn its fixed charges. The C., H. & D. and Pere Marquette under their guaranty of the bonds had already advanced some $146,000 to pay bond interest. Both of these roads then had contracts granting them the unlimited use of the terminal company's facilities, and in purchasing the stock they simply bound themselves more tightly to responsibility for its deficits.

It is, of course, idle to search for reasons justifying this stock deal from the standpoint of railroading or from any other standpoint. The sale was negotiated for the sellers by Thomas H. Tracy, then general counsel and a director of both purchasers, but also interested in and prime mover of the Toledo syndicate. The purchase was earnestly urged before the executive committee of the C., H. & D. by Russell Harding, its vice president and a director, and also president and a director of the Pere Marquette, while holding an interest in the St. Louis syndicate. Another representative of the Toledo syndicate on the C., H. & D. board was James J. Robison. All three were beneficial owners of terminal company stock and profited directly by the sale.

In the final arrangements the owners received $41 per share in cash for their stock and paid $42,000 as "commissions." The price itself, under the conditions indicated, is so absurd as to brand this transaction as fraudulent. Who it was that received the $42,000 of "commissions" is not disclosed by the record before us. We have already noted that the Hollins firm was primarily interested through contract to purchase control of the C., H. & D. That fact adds color to the spectacle of these "fiscal agents" of the two purchasing carriers abstracting $35,000 of cash from those carriers by raising the price to $42 as the stock passed through their hands. What the purpose was of adding $5 per share to the price originally paid by the C., H. & D. when the latter sold at $47 to the Pere Marquette does not definitely appear, but this additional increase may also be explained by the immediate nature of Hollins's interest in the C., H. & D. as against the Pere Marquette.

Furthermore, we deem it quite pertinent that the price of this stock practically quadrupled in one year in the face of constant operating deficits. We refer now to the fact that in April, 1904, the Toledo-St. Louis people had evidently contemplated selling this stock at $10 per share, and paying a $10,000 commission. We do not overlook the point that during that year the terminal company's bonds had been guaranteed by the Pere Marquette and C., H. & D., for anything paid by those roads under that guaranty was to be represented

by cumulative preferred stock, which of course would have priority over the common.

Finally there is this: The Hollins people at about this time were becoming interested in the Detroit, Toledo & Ironton road, and contemplating its expansion at the expense of the C., H. & D., as related in the main report. One element of that expansion project was to put the Detroit, Toledo & Ironton into the Toledo water front, and the plan in that connection required property rights which then lay in the hands of the terminal company. The record warrants the view that the unloading of this worthless terminal company stock on the Pere Marquette was, primarily, at least, to enable Hollins to complete his Detroit, Toledo & Ironton undertakings.

The sale of their terminal company stock left the Toledo-St. Louis interests with their subscriptions to the C., H. & D. common-stock syndicate as the only thing outstanding in their speculation. It is related in the body of this report how H. B. Hollins & Company had been given the control of the C., H. & D., in consideration of their financing the retirement of its 5 per cent preferred stock. The St. Louis underwriters, by agreement dated September 16, 1904, had authorized the Commonwealth Company to enter into the option contract of August 16 on their behalf.

The option contracts expired December 15, 1904, without being exercised on the Toledo and St. Louis subscriptions. Thereupon negotiations were begun with the Hollins firm, resulting in new contracts under which the latter agreed to purchase St. Louis holdings at cost and interest, and to permit the Toledo subscription to be pooled with Hollins's other holdings. The Toledo and St. Louis interests concurrently entered into contracts between themselves whereby the profits from those two Hollins contracts would be equally divided between them.

The facts as to the sale in September, 1905, of the C., H. & D. stock controlled by H. B. Hollins & Company are set forth in the main report. The settlement by that firm with the St. Louis underwriters for their subscriptions for 6,500 shares was made on September 29, 1905, through the United States Mortgage & Trust Company. There were repaid to the underwriters their payments on calls of $365,625; a balance of $186,875 of advances to the syndicate managers; and interest thereon, $36,565.20, making an aggregate of $589,065.20. The settlement with the Toledo interests, made about the middle of October, was based on $160 per share for their 6,500 shares, less expenses of $8,125 and 5 per cent commissions, $32,500, leaving a balance of $999,375. The net profit on the 13,000 shares of C., H. & D. stock subscribed for by the Toledo and St. Louis interests was $106,795; and this was divided equally between them.

Thus the amount distributable to the St. Louis subscribers was $642,462. As those subscribers still owed a balance on their notes given to pay their subscriptions to C., H. & D. stock, said balance with interest was deducted before the final distribution was made. Several changes had occurred in the list of underwriters during the three and a half years covered by all the transactions here related. The amount finally disbursed as net profits represented, for each subscription of $90,000 in the St. Louis underwriting, a profit of $2,500 on the $100,000 of terminal company bonds underwritten; a profit of $13,393.24 on the 300 shares of terminal company stock received therewith; and a profit of $2,329.45 on each 220 shares of C., H. & D. stock subscribed for, making the final net profit $18,222.69. Participation in these profits was distributed by the Commonwealth Company, as follows:

Name.	Amount.	Name.	Amount
Chas. H. Turner	$10,872.44	Wm. D. Orthwein	$18,222.68
Lawrence B. Pierce	54,362.22	John E. Pilcher	18,222.69
L. B. Tebbetts	18,222.70	Russell Harding	18,222.69
Elias Michael	9,111.27	Altheimer & Rawlings Inv. Co	21,744.88
A. D. Brown	18,222.68	F. E. Marshall	9,111.27
Edward F. Goltra	18,222.70	William E. Morgan	6,074.23
Otto F. Stifel	18,222.69	Harvey L. Christie	6,074.23
T. W. Carter	36,445.28	P. Taylor Bryan	6,074.23
James T. Drummond	18,222.69	Wm. F. Nolker	9,111.29
Saml. C. Davis	21,744.88	Chas. A. Stix	4,555.65
S. W. Fordyce	43,691.23	Wm. Stix	4,555.66
R. M. Scruggs, estate	18,222.69	Jesse D. Dana	18,222.70
C. G. Knox	18,222.69	Commonwealth Trust Co	92,119.25
S. M. Dodd	18,222.69		
C. G. Warner	18,051.14	Total	572,371.44

But in addition to this net profit of $572,371.44 distributed to the individual underwriters, the Commonwealth Company, as a corporation, received $180,001.24 as its net profit in the sale of the terminal company bonds and $61,757.62 as its net profit in the sale of its own terminal company stock, besides its fee as trustee under the mortgage.

It should be remembered that with the exception of Altheimer & Rawlings Investment Company, none of the St. Louis subscribers had put up a dollar of money, and further, that the Commonwealth Company had otherwise received all the interest due on all its advances for construction, etc. Therefore the aggregate of $814,130 here shown represents sheer net profits.

The profits of the Toledo syndicate from the construction of the terminal property, the profits on the sale of bonds, proceeds from the sale of the stock and profits upon its subscription to the C., H. & D. syndicate, aggregated at least $1,482,500. That amount was disbursed to the members as dividends of the construction company on April 22 and October 24, 1905, December 20, 1906, and February 2, 1910, in the following sums:

D. Robison, jr., & Sons Co	$289,087.50
Edward Ford	289,087.50
John Cummings	207,550.00
Geo. G. Metzger	138,366.67
King & Tracy	69,183.33
William Hardee	207,550.00
James J. Robison	140,837.50
James J. Robison, trustee	140,837.50

Omitting profits on the subscriptions to the C., H. & D. syndicate, it is thus found that the Toledo-St. Louis interests divided profits of $2,190,000 on a property costing not more than $2,610,000.

APPENDIX 13.—*Statement showing sale prices of common stock of Pere Marquette Railroad Company on the New York and Boston exchanges.*

	New York stock exchange.		Boston stock exchange.	
	Lowest.	Highest.	Lowest.	Highest.
1901.				
January	33½	43	30	44
February	41	65	39½	62
March	56½	61½	54	60⅜
April	(1)	(1)	55	58
May	(1)	(1)	52	55½
June	53	75	54	75
July	74½	75	65	75
August	70½	70½	66	70
September	75	75	66	76
October	77½	85	71⅜	88
November	87½	94	82	95
December	83	85	79	84
1902.				
January	78	83	71	83½
February	71	79	70	79
March	(1)	(1)	70	75
April	73	76	72	77
May	73	73	68	72
June	71	71½	69½	70½
July	77	78	72	82
August	78	79	75	81
September	79½	85½	79	85½
October	80	82½	79	81½
November	80	83	79	83½
December	80	82½	80	84
1903.				
January	80	82	80	84
February	79	84½	80	83½
March	79	82	78½	82
April	78½	87⅜	78	88
May	86½	91½	85½	91
June	83½	87	84½	86
July	74	85½	74	85
August	76	79½	75	79½
September	75	77½	74	76
October	75	77½	74	77
November	75	81	75	76½
December	80	84	79½	80½

	New York stock exchange.		Boston stock exchange.	
	Lowest.	Highest.	Lowest.	Highest.
1904.				
January	79	81⅜	79½	79½
February	75	78	75	80½
March	75	77½	75	75
April	75	78⅜	75	78
May	78	79⅜	77	79½
June	74½	77½	76½	78
July	77	78	74	78
August	(1)	(1)	74	74
September	(1)	(1)	74	74
October	78½	78½	75	74
November	70	78	74	75
December	76½	78	75	76
1905.				
January	77	97½	79	96⅜
February	98	106	97½	102
March	100	101	99	100½
April	(1)	(1)	99½	100
May	(1)	(1)	99	99
June	100	100	98	99½
July	(1)	(1)	(1)	(1)
August	(1)	(1)	95	97½
September	99	101½	97½	101
October	101	101	101	101
November	(1)	(1)	(1)	(1)
December	(1)	(1)	(1)	(1)
1906.				
January	(1)	(1)	(1)	(1)
February	(1)	(1)	(1)	(1)
March	(1)	(1)	(1)	(1)
April	(1)	(1)	(1)	(1)
May	(1)	(1)	(1)	(1)
June				

[1] No sale.

APPENDIX 14.

To the holders of 5 per cent preferred stock of the Cincinnati, Hamilton & Dayton Railway Company:

Acting on behalf of the holders of more than 20,000 shares of the 5 per cent preferred stock of the Cincinnati, Hamilton & Dayton Railway Company, we beg to announce that we have effected an arrangement for the adjustment of the differences that have arisen between the company and such preferred stockholders over the recent issue of securities of the company for the purpose of acquiring the controlling interest in the stock of the Pere Marquette Railroad Company. Under the terms of this arrangement, which has been negotiated for the equal benefit and protection of every holder, all of the 5 per cent preferred stock of the Cincinnati, Hamilton & Dayton Railway Company will be taken up at $110 per share. Stockholders desiring to avail themselves of the benefit of the arrangement are requested to deposit their certificates properly indorsed with P. J. Goodhart & Company, No. 326 Walnut street, Cincinnati, Ohio, on any day commencing August 30, 1904, and ending September 30, 1904, and will receive therefor from them in cash $110 per share, less a deduction of $2 per share to cover the expenses and services of the committee.

No stock will be taken after September 30, 1904.

Dated, Cincinnati, Ohio, August 17, 1904.

LAWRENCE MAXWELL, Jr.,
EDWARD L. HEINSHEIMER,
JOSEPH S. GRAYDON,
GEORGE B. COX,
Committee.

In the protracted negotiations which have resulted in the foregoing arrangement counsel for the holders of 5 per cent preferred stock has been confronted from the beginning with the claim that the stock was redeemable at par. In view of the embarrassment to the corporation and the loss to all classes of stockholders that would have resulted from litigation over this claim, and other controversies growing out of the issue of securities of the company in connection with its purchase of common stock of the Pere Marquette Railroad Company, I regard the amicable adjustment which has been made as advantageous to all parties, and have no hesitation in recommending it to the acceptance of the preferred stockholders. Preferred stockholders who do not deposit their stock before the expiration of the time limited in the foregoing arrangement must be prepared to meet the claim of the railway company that their stock is redeemable at par.

LAWRENCE MAXWELL, Jr., *Counsel.*

APPENDIX 15.—*Cincinnati, Hamilton & Dayton & Pere Marquette System.*

CAPITALIZATION	C. H. & D.	Pere Marq.	Total for System.
Voting Stock Outstanding: (##)			
Common Stock	$8,000,000		$8,000,000
Equipment bonds,	2,999,000	5,001,827	8,000,000
General Bonds (###)	47,482,000	$49,127,000	96,609,000
Total Bonds,	$50,481,000	$54,128,827	$104,609,827
FIXED CHARGES.			
Interest on Funded Debt	2,290,210	2,447,079	4,737,289
Taxes (est. on basis of last year's taxes)	274,500	416,000	690,500
Rental (tracks, yards, terminals,)	329,305	646,478	975,783
Rental divd Pere Marq. Stock,		578,765	578,765
Total,	$2,894,015	$4,088,322	$6,982,337
EARNINGS ESTIMATED FOR PRESENT YEAR:			
Gross Earnings,	9,500,000	14,500,000	24,000,000
Operating Expenses {CH&D 65% / P. M. 70%}	6,175,000	10,150,000	16,325,000
	$3,325,000	$4,350,000	$7,675,000

The C. H. & D. has taken up and paid for all of its preferred stock, excepting about 4,000 shares which are still outstanding, and there is now deposited with the Central Trust Co. of New York a sum sufficient to pay for this outstanding stock.

The total issued capital stock of the Pere Marquette Railroad is $12,000,000 preferred and $16,000,000 common, of which the C. H. & D. Railway Co. holds $1,487,800 preferred and $12,834,450 common, or a total of $14,322,250 out of $28,000,000 stock issued.

The C. H. & D. and P. M. have agreed to issue their joint collateral trust bonds for $3,500,000 with interest at 4% from July 1, 1905, in payments for the entire capital stock of the Chic., Cin. & Louisville R. R., which issue is not included in the above amount of General Bonds, as the C. C. & L. has not yet been taken over and as it is expected that the net earnings of this Company will be sufficient to take care of the interest on these bonds as well as on its own funded debt.

CONTINGENT LIABILITIES.		CH&D	Pere Marq. Bonds	Total for System. Annual Interest
Principal and Int. guaranteed by P. M. and C. H. & D. jointly on:				
Toledo Ry & Term. Co. 1st. Mtg. 4-1/2%			$3,500,000.00	$157,500.00
Toledo Riverside Ry. Co. " " 5%			150,000.00	7,500.00
Interest on Bonds of the C. C. & L. R. R. Co. guaranteed by C. H. & D. and P. M. jointly for 10 years from July 1st, 1904, or during life of Coll. Trust Bonds to be given in payment for C. C. & L. Stock,			6,520,000.00	312,120.00
Bonds of the Marq. & Bessemer Dock & Navigation Co. guaranteed jointly by the Pere Marq. and the Bessemer & Lake Erie R. R. Co., $500,000-1/2,			250,000.00	22,500.00
Total,			$10,420,000.00	$499,620.00
Mileage,		1,026.47	2,382.02	
Dayton & Union	47			
Cin., N. O. & T. P.,	337			
		384.00		3,791
General Bonds per mile,				$28,352
Capital Stock " "	$2,343			2,348

Bonds Owned available for Improvements and Corporate Purposes:	
C. H. & D. Consolidated 4-1/2s, 1955:	
Available for Improvements and Corporate Purposes,	$10,000,000
C. H. & D. Refunding 4s, 1954:	
Available for Improvements,	1,477,000
Cinc. & Dayton 1st 4-1/2s, Held in Treasury,	275,000
Cinc., Ind. & West. 1st 4s, " " "	50,000
	$11,802,000
P. M. Refunding 4s, 1955:	
Reserved for Corporate Purposes,	5,245,000
TOTAL BONDS,	$17,047,000
Stocks Owned which can be sold at Par for Improvements:	
Pere Marquette Stock owned by CH&D, Pfd. par value,	1,487,800
Com " "	12,834,450
Southwestern Construction Co. stock, " "	750,100

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